
**EXPERT REPORT OF HAL PORET IN MATTER OF
CHURCH & DWIGHT V. SPD SWISS PRECISION DIAGNOSTICS**

**SURVEY TO DETERMINE CONSUMER PERCEPTION REGARDING
CLEARBLUE ADVANCED PREGNANCY TEST WITH WEEKS
ESTIMATOR**

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December 2014

TABLE OF CONTENTS

	<u>Page #</u>
BACKGROUND AND PURPOSE -----	1
STUDY AUTHORSHIP AND RESPONSIBILITY -----	2
STUDY DESIGN -----	3
SUMMARY OF KEY FINDINGS-----	18
METHODOLOGY -----	21
THE RELEVANT UNIVERSE OF INTEREST-----	21
SAMPLING PLAN -----	23
DOUBLE-BLIND INTERVIEWING -----	25
INTERVIEWING PROCEDURES-----	25
RESPONDENT VERIFICATION-----	26
INTERVIEWING PERIOD-----	27
DETAILED FINDINGS-----	28
APPENDIX A: CURRICULUM VITAE OF STUDY'S AUTHOR	
APPENDIX B: QUESTIONNAIRES (provided electronically)	
APPENDIX C: FIELD INSTRUCTIONS (provided electronically)	
APPENDIX D: VALIDATION QUESTIONNAIRE/LETTER	
APPENDIX E: MATERIALS REVIEWED/FEES CHARGED	
APPENDIX F: PHOTO OF LABELED TEST KITS SHOWN TO RESPONDENTS	
APPENDIX G: SURVEY DATA FILE (provided electronically)	
APPENDIX H: CONTROL CELL VERBATIM RESPONSES	

BACKGROUND AND PURPOSE

SPD Swiss Precision Diagnostics GmbH (“SPD”) markets Clearblue home pregnancy test kits. I understand that beginning in August 2013, SPD began marketing a Clearblue pregnancy test in a package that promotes a Weeks Estimator feature. I refer to this Clearblue pregnancy test as the “Weeks Estimator” or the “Product” for short. The following is an image of the first-marketed version of the Weeks Estimator package (the “Old Package”):



The following is an image of the current version of the Weeks Estimator package (the “New Package”):¹



It is my understanding that the FDA has cleared the Weeks Estimator for the intended use of estimating the number of weeks since a pregnant woman ovulated but has declined to clear the Weeks Estimator for the intended use of estimating how many weeks a woman has been pregnant.

Church & Dwight Co., Inc. (“Church & Dwight”) has filed a lawsuit alleging that, among other things, the Weeks Estimator package misleadingly communicates to consumers that the Product will tell pregnant women how many weeks they are pregnant. Proskauer Rose LLP, attorneys for Church & Dwight, retained me to design and conduct a survey to determine the extent to which, if at all, consumers understand the Old Package and the New Package to (i) communicate that the Product estimates the number of weeks a woman has been pregnant; and (ii) whether the number of weeks estimated by the Product is the same as the number of weeks pregnant a doctor would tell them. This report details the methodology, implementation and results of

¹ The “Old Package” contains the word “New” on the box and the “New Package” does not.

the survey. As discussed in detail below, the survey showed that consumers overwhelmingly understand the Old Package and the New Package to indicate that the Weeks Estimator estimates the number of weeks a woman is pregnant and also that the number of weeks estimated by the Product is the same number of weeks pregnant a doctor would tell them.

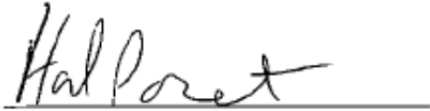
STUDY AUTHORSHIP AND QUALIFICATIONS

This study was designed, supervised, and implemented by ORC International under my supervision as Senior Vice President.

I have personally designed, supervised, and implemented approximately 700 surveys regarding the perceptions and opinions of consumers. Over 200 of these surveys have involved consumer perception with respect to advertising, including product packaging. I have personally designed numerous studies that have been admitted as evidence in legal proceedings and I have been accepted as an expert in survey research on numerous occasions by U.S. District Courts, and also have frequently participated as a survey expert in proceedings before the Trademark Trial and Appeal Board, the FTC, and the National Advertising Division of the Council of Better Business Bureaus (NAD).

I have frequently spoken at major intellectual property and legal conferences on the topic of how to design and conduct surveys that meet legal evidentiary standards for reliability, including conferences held by the International Trademark Association (INTA), American Intellectual Property Law Association, Practicing Law Institute, Managing Intellectual Property, Promotions Marketing Association (now known as the Brand Activation Association), American Conference Institute, and various bar organizations.

In addition to my survey research experience, I hold bachelors and masters degrees in mathematics and a J.D. from Harvard Law School. Additional biographical material, including lists of testimony and publications, is provided in Appendix A.

A handwritten signature in black ink, reading "Hal Poret", is written over a horizontal line.

Hal Poret

Dated: December 1, 2014

STUDY DESIGN

A total of 1200 qualified respondents participated in this mall-intercept study conducted in sixteen markets across the continental U.S.:²

- 400 Test Group respondents were split across two Test Groups in which they were shown one of two Clearblue products with the Weeks Estimator
 - o A Test Group of 200 respondents was asked about the Old Package
 - o A Test Group of 200 respondents was asked about the New Package
- 800 Control Group respondents were split across four Control Groups, two for the Old Package and two for the New Package
 - o 200 respondents participated in Control Group 1 for the Old Package, which involved showing an altered version of the Old Package
 - o 200 respondents participated in Control Group 2 for the Old Package, which involved showing a second altered version of the Old Package
 - o 200 respondents participated in Control Group 1 for the New Package, which involved showing an altered version of the New Package
 - o 200 respondents participated in Control Group 2 for the New Package, which involved showing a second altered version of the New Package³

The survey employed a standard design in which respondents were shown one product package and were then asked a series of questions to determine what they understood the package to communicate. Initial survey questions were very general to allow respondents to express any opinions in their own words prior to the survey introducing particular topics. Subsequent questions focused respondents' attention on the Product's Weeks Estimator feature in order to probe their understanding of that feature.

² See Relevant Universe and Sampling sections below for more specific information on the respondents who participated in the survey.

³ Details regarding the controls are discussed below. Images of the Test and Control products as they appeared to respondents are provided in Appendix F.

Test Groups

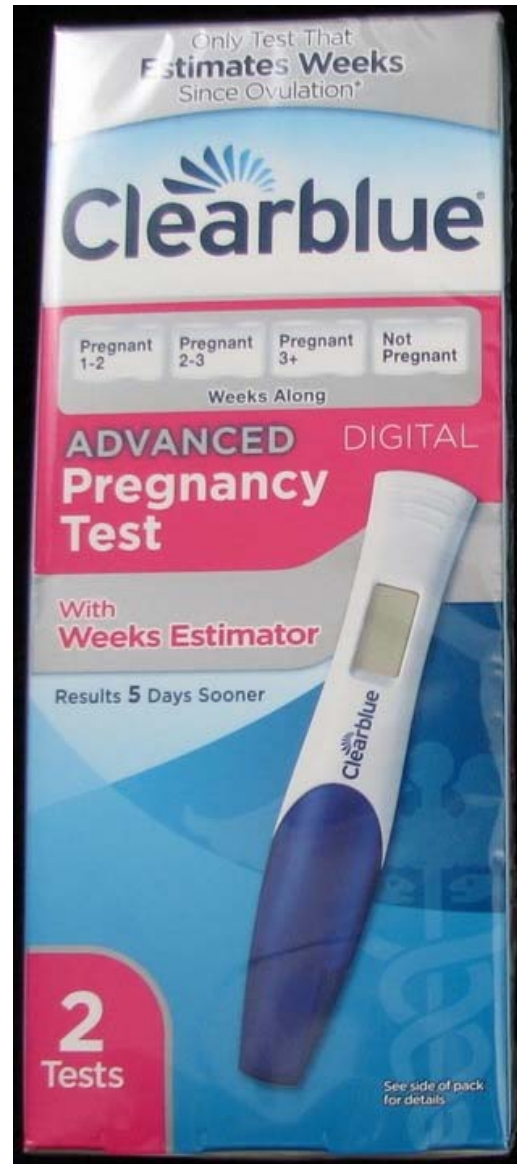
The survey included two Test Groups, each comprised of 200 respondents who were assigned to participate in the Test Group for the Old Package or the New Package.

Below are images of the products shown to Test Groups 1 and 2, respectively:

Test Group Old Package:



Test Group New Package:



After respondents were qualified for the survey and were escorted to a private interviewing area, the main survey questions were programmed and an interviewer read each of these questions verbatim directly from the computer screen to the

respondents. Interviewers entered respondents' answers to each question prior to continuing to the next question.

First, interviewers instructed respondents as follows:

In a moment I am going to show you a home pregnancy test kit. I would like you to please take your time to carefully review the box as you normally would if you were considering purchasing the product.

After you are finished looking at the product I will ask you some questions about it. If for any question, you don't know or have no opinion, please feel free to say so. Please do not guess.

Then, interviewers handed respondents the appropriate pregnancy Test box, corresponding to the Test Group to which they were assigned, and read the following instruction:

Please take your time to review this box as you normally would if you were considering purchasing the product. Please do not open the box.

I am going to give you some time to review it and will be back shortly.

The interviewer then left the room for one minute to give respondents an opportunity to review the product on their own. Upon returning to the interview room, the instructor continued:

Feel free to continue to take more time to review the box if you need it.

Please let me know whenever you are finished.

Once the respondent indicated she was finished reviewing the product box, the interviewer took back the product and placed it out of sight for the remainder of the interview. In the present circumstances, removing the package from sight prior to asking questions was appropriate because this allows the survey to measure the

genuine impressions respondents formed while reviewing the package rather than inducing them to look back at the package and search for an answer after hearing the questions.

After the product was out of sight, the interviewer continued with the following statement:

Now I'm going to ask you a few questions. Please be as specific and detailed as you can in answering the questions.

Respondents were next asked:

What was the main message or messages on the product's box?

Interviewers entered respondents' answers verbatim and probed once with, "Anything else?"

Next, respondents were asked:

What else, if anything did the box communicate to you?

Interviewers entered respondents' answers verbatim and probed once with, "Anything else?"

Then, respondents were asked:

You may have mentioned this already, but did the box communicate anything about a weeks estimator?

- Yes, it did
- No, it did not
- I don't know

Respondents who answered yes were then asked:

What did the box communicate about a weeks estimator?

Interviewers entered respondents' answers verbatim and probed once with, "Anything else?"

These respondents were then asked:

What, if anything, did the box communicate about what the weeks estimator tells you?

Interviewers entered respondents' answers verbatim and probed once with, "Anything else?"

These questions allowed respondents to provide their understanding of the Weeks Estimator feature without the survey saying anything that could suggest any possible interpretation. These questions allowed the survey to reliably measure the extent to which respondents mention that the Weeks Estimator feature estimates number of weeks pregnant versus number of weeks since ovulation.

It is my understanding that SPD has taken the position that even if consumers understand the Product package to communicate that the Product estimates weeks of pregnancy, they will understand that the estimate of weeks pregnant is based on weeks since ovulation, which is different than weeks since their last menstrual period. I understand that the convention doctors in the United States use to estimate how many weeks a woman is pregnant is weeks since her last menstrual period. I also understand that estimating pregnancy based on weeks since ovulation would produce a different estimate of weeks pregnant from the standard used by doctors. In order to test SPD's

position about what the Product package communicates, an additional question was asked to determine the extent to which respondents understand the Weeks Estimator to be providing the same estimate that a doctor would give, or a different one.

For that question, which followed the questions noted above, interviewers handed respondents who had noticed the Weeks Estimator a card with response options printed on it and instructed them:

For this question, please read the answer choices on this card carefully before answering.

Based on what the box communicated, do you think the product's estimate of weeks is telling you...

- The same thing as when a doctor gives you an estimate of weeks
- A different thing than when a doctor gives you an estimate of weeks
- Or, do you not have an opinion

Interviewers read these choices slowly to respondents and the choices also appeared on the card handed to respondents. Having the options printed out for respondents ensured that they could clearly read and understand the choice they were selecting.⁴

This concluded the survey for respondents in the Test Group.

Control Group

The survey also included two Control Groups for each of the Old Package and the New Package, with each Control Group for each Package comprised of 200 respondents.

Control groups are used in advertising comprehension surveys to measure the rate of survey "noise" or "false positives." I included the Control Groups in this survey for that purpose, while recognizing (for reasons discussed in detail later in this report) that the effect of these Control Groups almost certainly would be to understate the actual level of net confusion reflected in the survey results.

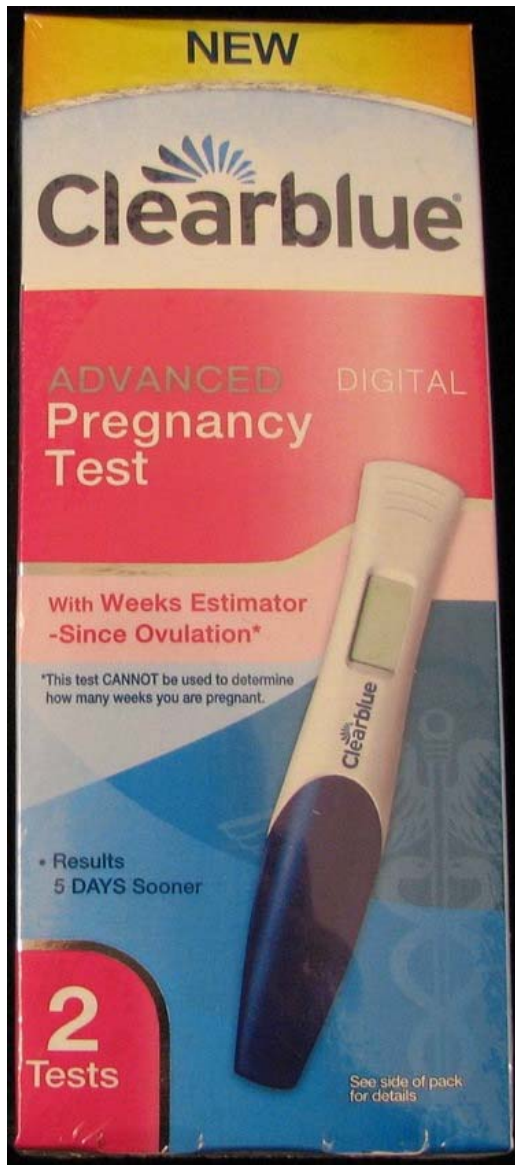
⁴ A copy of the hand card shown to respondents is provided in Appendix B.

Control Group 1 for Old and New Packages

Control Group 1 for each package was designed as a control for the issue of whether or not respondents understand the Old or New Package to be communicating that the Weeks Estimator estimates number of weeks pregnant. In this context, Control Group 1 measured the tendency of respondents to answer that the Weeks Estimator estimates number of weeks pregnant even when the Package was modified in an attempt to clarify that the Product estimates weeks since ovulation, not weeks pregnant.

The following is the image of the package used for Control Group 1 for the Old Package next to the Test Old Package:

Control Group 1 Old Package:

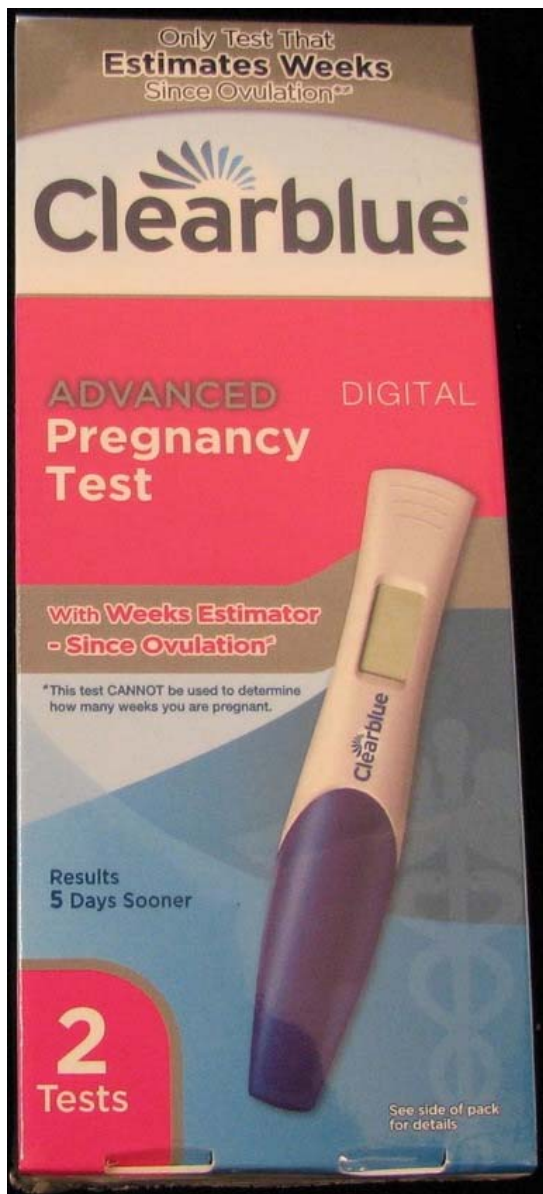


Test Group Old Package:



Similarly, the following is the image of the package used for Control Group 1 for the New Package next to the Test Group New Package:

Control Group 1 New Package:



Test Group New Package:



As these images show, the following changes were made to create the control packages for Control Group 1 for the Old Package and the New Package:

- The panel showing “Pregnant 1-2”, “Pregnant 2-3”, “Pregnant 3+,” and “Not Pregnant” was removed.
- The words “-Since Ovulation*” were added below “With Weeks Estimator.”
- The words “This test CANNOT be used to determine how many weeks you are pregnant” were added to the front of the package.

Although I recognized (correctly as it turned out) that it may not be possible for a control pregnancy test kit package that includes the name “Weeks Estimator” to entirely remove the implication that the pregnancy tests contained in that package estimate how many weeks a woman is pregnant, the above changes were made to attempt to minimize such communication as much as possible.

It should be noted that Control Group 1 was not designed to control for the issue of whether respondents who do understand the package to communicate that the Product estimates number of weeks pregnant nevertheless might understand that the estimate is based on a different standard – weeks since ovulation – than what a doctor would use. Changes were not made to the packages for Control Group 1 to address that issue, which the final closed-ended question focuses on.

Control Group 2 for the Old and New Packages was designed specifically to deal with the issue of whether respondents who do understand the package to communicate that it estimates number of weeks pregnant nevertheless might understand that the estimate is based on a different standard than what a doctor would use. In order to do so, the Control Group 2 package purposefully did not attempt to dispel any verbal or visual suggestion in the actual Old and New Packages that the Product estimates the number of weeks a woman is pregnant. Instead, the Control Group 2 package merely sought to inform respondents in that Control Group, via language on the front and back of the Control Group 2 packages, that the weeks estimate the Product provides is not the same estimate as a doctor would give them. Accordingly, the goal of Control Group 2 was to serve as a control for the survey’s final closed-ended question by measuring the extent

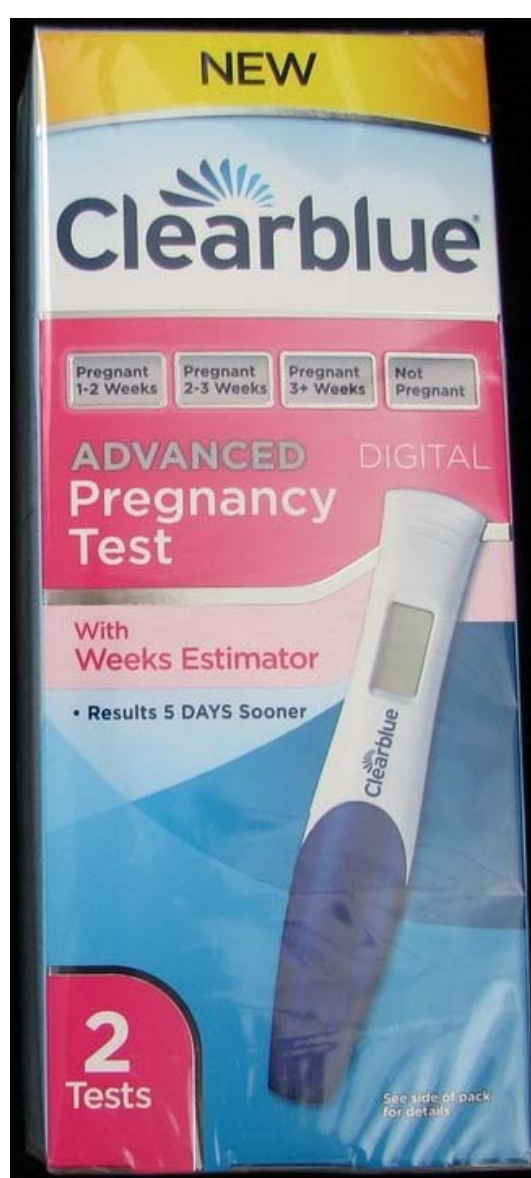
to which respondents answer that the estimate of the number of weeks provided by the Weeks Estimator is the same as what a doctor would tell them even when the package expressly states on the front label that it is not.

The following are the images of the packages used for Control Group 2 first compared to the Old Package and then compared to the New Package:

Control Group 2 Old Package:



Test Group Old Package:



Control Group 2 New Package:



Test Group New Package:



As the above images show, the only alteration of the Control Group 2 packages compared to the actual packages was to include the following additional language:

"Estimate Of Weeks Is NOT The Same Estimate That A Doctor Would Give You."

It is important to note that Control Group 2 was not a control for the open-ended questions, because it did not alter the package to attempt to clarify that the Weeks Estimator measures weeks since ovulation rather than number of weeks pregnant.

Respondents in the Control Groups participated in a survey identical to the Test Group respondents with the sole exception that they were shown a different product box.

See Appendix B for the complete text of the main questionnaire.

SUMMARY OF KEY FINDINGS

1. When asked Questions 200 and 201 about the main or other messages of the package, 37.0% of Test Group respondents who saw the Old Package gave answers indicating that the product estimates number of weeks pregnant. When subtracting the Control Group 1 result to account for possible noise, this yields a net of **at least** 24.0% deception from the general open-ended questions **alone**. And, as I discuss at pp. 37-38 below, this is a very conservative estimate of net deception; in all likelihood, the extent of deception reflected from the answers to the responses to Questions 200 and 201 of the Test Group respondents who saw the Old Package is even higher. For the same reasons, the level of deception identified in Paragraphs 2-6 immediately below is also very conservative, and in all likelihood is even higher than calculated.
2. When asked about Questions 210 and 215 about the Weeks Estimator feature, 52.0% of Test Group respondents who saw the Old Package (or 60.8% of those who answered that they noticed the Old Package's reference to "Weeks Estimator") gave answers indicating that the Product estimates number of weeks pregnant. When subtracting the Control Group 1 result to account for possible noise, this yields a net of **at least** 28.5% deception (or 32.7% of those who noticed the Weeks Estimator feature).
3. In the closed-ended question (Question 220), 45.0% of all respondents who saw the Old Package (or 52.6% of those who noticed the Old Package's reference to a Weeks Estimator) answered that the Product is giving the same estimate as a doctor. When subtracting the Control Group 2 result to account for possible noise, this yields a net of at least 18.0% deception (or 21.8% of those who noticed the Weeks Estimator feature).
4. When asked Questions 200 and 201 about the main or other messages of the package, 32.5% of Test Group respondents who saw the New Package gave answers indicating that the Product estimates the number of weeks pregnant.

- When subtracting the Control Group 1 result to account for possible noise, this yields a net of 20.0% from the general open-ended questions alone.
5. When asked Questions 210 and 215 about the Weeks Estimator feature, 47.0% of Test Group respondents who saw the New Package (or 52.2% of those who noticed the New Package's reference to "Weeks Estimator") gave answers indicating that the Product estimates the number of weeks pregnant. When subtracting the Control Group 1 result to account for possible noise, this yields a net of 30.0% deception (or 32.6% of those who noticed the Weeks Estimator feature).
 6. In the closed-ended Question 220, 47.5% of respondents who saw the New Package (or 52.8% who were asked the question) answered that the Product is giving the same estimate as a doctor. When subtracting the Control Group 2 result to account for possible noise, this yields a net of 24.0% (or 26.1% if based on those who noticed the Weeks Estimator).

See Detailed Findings section below for additional information on results. All responses to all survey questions were entered directly into a computer. The full data set containing all respondents' answers to all questions will be provided in electronic form as Appendix G.

METHODOLOGY

THE RELEVANT UNIVERSE OF INTEREST

The universe for this survey is women age 18 to 49 years old who would use an at-home pregnancy test kit if they thought they might be pregnant.

The survey excluded persons employed in fields which would give them special knowledge or insight about this subject, namely those working in advertising, or market research, or for an obstetrician or gynecologist, or a manufacturer or distributor of reproductive health products. Similarly, persons who had an immediate household member so employed were also excluded from participating in the survey. Screening out people with special knowledge is a generally accepted procedure. In accordance with standard practice, respondents who had participated in a mall-intercept survey, other than a political poll, in the past 3 months were also excluded. Persons who had heard anything about the subject of any other interviews being conducted in the mall within the past month were also excluded. Additionally, potential respondents were asked if they normally wear glasses or contact lenses when shopping and, only respondents who had appropriate eyewear with them, if needed, were able to participate in the survey.

The following screening questions were employed to ensure the proper sample universe was reached for each Group of interest.

First, respondents were asked:

If you thought you had a fever, which, if any, of the following things would you do? Please choose as many from the list as apply. Would you...

- Call or visit your doctor
- Take your temperature
- Take a fever reducing medication such as aspirin

- Conduct online research about fevers

Interviewers read the list of items to respondents and recorded: yes, no, don't know, or refused for each item.

Next, respondents were asked:

If you were experiencing persistent headaches, which, if any, of the following things would you do? Would you...

- Call or visit your doctor
- Take a multi-purpose pain reliever, such as Tylenol or Advil
- Take a pain reliever specifically designed to help with headaches, such as Excedrin Tension Headache
- Conduct online research about persistent headaches

Again, interviewers read the list of items to respondents and recorded: yes, no, don't know, or refused for each item.

Next, respondents were asked a question employed specifically to identify them as a member of the sample universe, or not. Respondents were asked:

If you thought you might be pregnant, which, if any, of the following things would you do? Please choose as many from the list as apply. Would you...

- Call or visit your doctor
- Use an at-home pregnancy test kit
- Make lifestyle changes, such as avoiding alcoholic beverages, cigarettes, or certain foods
- Conduct online research about pregnancy

Again, interviewers read the list of items to respondents and recorded: yes, no, don't know, or refused for each item. Respondents who answered that they would use an at-home pregnancy test kit if they thought they might be pregnant were considered part of the appropriate sample universe and able to qualify for the survey.

The actual wording of the screening questions used is shown in Appendix B.

SAMPLING PLAN

The sampling procedure employed, which utilized shopping malls as a means of identifying relevant consumers, has been widely used and relied upon by market researchers, and many business decisions of consequence are made based on studies that employ such plans. Properly designed and executed studies of this type have been accepted in numerous court decisions.

A multi-stage sampling plan was executed in interviewing facilities located in shopping malls in each of the four principal U.S. Census regions. The three stages of the sampling plan for this study were:

SAMPLING UNIT

1. Census regions
2. Metropolitan Areas/Shopping malls
3. Respondents within shopping malls

1. Census Region Selection

In accordance with generally accepted standards, the study was conducted in four markets within each of the four U.S. census regions -- Northeast, South, Midwest and West -- thus obtaining a cross section of residents from all parts of the country.

2. Metropolitan Area/Shopping Mall Selection

The criteria for selecting a specific shopping mall testing facility to be used in the study included: 1) that an experienced interviewing organization existed within the mall; 2) that this organization had a permanent office within the shopping center created specifically to conduct interviews with consumers; and 3) that

their workload was such that they could complete their portion of the assignment within the desired schedule.

Using these criteria, the following malls were selected as interviewing sites:

Region	Market	Mall
Northeast	Buffalo, NY	Eastern Hills Mall
	Paramus, NJ	Bergen Town Center
	Philadelphia, PA	Franklin Mills Mall
	West Nyack, NY	Palisades Center
South	Austin, TX	Lakeline Mall
	Ft. Worth, TX	Hulen Mall
	Houston, TX	The Woodlands Mall
	Tampa, FL	Westfield Countryside Mall
Midwest	Indianapolis, IN	Castleton Square
	Chicago, IL	Fox Valley Mall
	Detroit, MI	Laurel Park Place Mall
	St. Louis, MO	St. Louis Mills Mall
West	Los Angeles, CA	Ontario Mills
	Denver, CO	Southwest Plaza
	Tucson, AZ	Park Place Mall
	Phoenix, AZ	Arizona Mills Mall

3. Respondent Selection

To select individual respondents within the malls, hard quotas by age range were assigned to each market for each of the six groups. The age quotas were the same as used by SPD in its previous survey regarding a Church & Dwight home pregnancy test:

<u>Respondents in Each Group by Age</u>	Female
18 - 24	70
25 - 34	80
34 - 49	50
Total	200

DOUBLE-BLIND INTERVIEWING

It is important to point out that the study was administered under “double-blind” conditions. That is, not only were the respondents kept uninformed as to the purpose and sponsorship of the study, but the interviewers were similarly “blind” with respect to the study’s purpose and sponsorship. Without such knowledge, there is little likelihood that some interviewer(s) might ascertain what responses would be desirable from the sponsor’s perspective, and thereby be in a position either to exert an influence on the respondents in this regard, or to modify their recording of a respondent’s answers so as to be “helpful.”

INTERVIEWING PROCEDURES

Screenings for eligibility were conducted on the mall premises in each designated shopping mall. Once qualified, respondents were escorted into the interviewing facility that was operated by the interviewing organization. Throughout the assignment, tight control and supervision was maintained over all aspects of the interviewing.

ORC International prepared customized, detailed interviewer and supervisor instructions for this assignment. Copies of these instructions are found in Appendix C of this report.

Before beginning work on this study each interviewer was required to:

- Read the interviewer instructions.
- Attend a personal briefing. At this briefing, interviewing procedures were outlined and discussed in detail, question by question.
- Complete one or more practice interviews.

Additionally, a representative from each interviewing facility was required to contact an ORC representative with periodic detailed progress reports. This allowed ORC International to closely monitor and supervise the progress of the study.

RESPONDENT VERIFICATION

In addition to on-the-spot verification where both respondent and interviewer signed their respective names onto a “certification” page, telephone follow-up validation calls were attempted by an independent company who specializes in this type of work to verify that the interview did in fact take place and that only qualified respondents were interviewed.

A listing of each respondent's name and phone number was sent to Outfielders of Eastchester, NY, an independent telephone interviewing service, for verification.

This independent validating service was given the responsibility of attempting to re-contact respondents by phone to confirm that:

- * Such a person actually existed.
- * She met the universe requirements for this study.
- * She was actually interviewed for this study.

A total of 1200 interviews were completed of which 1200 provided telephone numbers. Outfielders attempted 100% validation and successfully contacted 744, which represents a level of validation (62%) far exceeding the customary industry practice, which is to validate 15-20%. This validation procedure did not identify any discrepancies.

A copy of the validation questionnaire is included in Appendix D of this report.

INTERVIEWING PERIOD

Interviewing was conducted from August 21, 2014 through September 18, 2014.

DETAILED FINDINGS

As detailed above, all respondents in all groups were asked a series of open-ended questions. All open-ended answers were carefully reviewed in order to flag any responses that potentially indicate a belief that the Product estimates the number of weeks the woman is pregnant or that the Product estimates the number of weeks since ovulation.

A response to a survey question was assigned a code if it fell into one of the following categories:

Category 1:

Responses were included in this category if they explicitly state that the Product estimates "weeks pregnant" or an equivalent use of the word "weeks" in connection with "pregnant" or "pregnancy."

Category 2:

Responses were included in this category if they strongly suggest that the Product estimates "weeks pregnant" but did not explicitly use those terms. The types of common responses in this category include that the Product estimates:

- how pregnant you are
- how far along you are
- how many weeks you are

These answers use common phrases for referring to weeks of pregnancy and highly suggest that the respondent is referring to weeks pregnant.⁵

⁵ The possibility that such responses do not indicate a belief that the Product is estimating weeks pregnant is ultimately accounted for through Control Group 1, since respondents who

Category 3:

Responses were included in this category if they indicate that the Product estimates weeks since ovulation. In order to be conservative, responses that referred to the Product estimating "weeks pregnant" but also referred to a measurement since the time of ovulation (or anything indicating that the measurement of "weeks pregnant" is not based on the same standard typically used in the field) were included in this category rather than Category 1 or 2.⁶

Responses were not assigned any code if they merely referred to "weeks" but used no additional language that could allow a distinction to be made between whether this means weeks pregnant or weeks since ovulation. For instance, the following types of responses were not assigned any code:

--weeks
 --Weeks Estimator
 --how many weeks
 --1-2 weeks
 --number of weeks

Such responses are mere repetitions of the explicit terms on the package or are too vague/general to clarify respondents' understanding.⁷

Responses were also assigned no code if their response did not refer to the estimation of

gave these same answers in Control Group 1 are counted in the survey noise level, which is deducted from the Test Group result to yield the net confusion rate.

⁶ Respondents were not counted if they mentioned ovulation but were stating that it was an ovulation test rather than that it estimated weeks since ovulation.

⁷ "How many weeks" is treated differently than "How many weeks you are" because the language "you are" strongly suggests that "you are pregnant" is implied, whereas "how many weeks" on its own could potentially mean "how many weeks pregnant" or "how many weeks since ovulation."

weeks at all.

I. RESULTS FOR OLD PACKAGE

This section discusses the results relating to the Old Package:



Main Messages Question

In response to the main messages question, 40 respondents (20.0%) gave answers indicating a belief that the product estimates the number of weeks a woman is pregnant.

Seventeen respondents explicitly answered that the Product estimates the number of weeks pregnant (Category 1 mentioned above). The following are the verbatim responses of these respondents to the main messages question:⁸

ID #	<u>Verbatim Response to Main Messages Question</u>
61	That it can actually tell you how many weeks pregnant you are a/e no
71	That if you are pregnant it will tell you how many weeks you are a/e no
94	advanced meaning tells you the exact amount of weeks you are pregnant
116	clear blue, pregnancy test, shows what weeks you are pregnant
125	This product looks like it would be used to help people determine if they are pregnant and how many weeks they've been pregnant for.
195	it is advanced and it tells you how long you have been pregnant
215	the main message is advanced pregnancy test. Its telling you if you are 1-2 weeks or more in your advanced pregnancy.
261	It tells you how many weeks pregnant you are if you are pregnant and if you are not pregnant, it will tell you.
270	THE FACT THAT IT TELLS YOU HOW MANY DAYS YOURE PREGNANT
302	I can see how long I have been pregnate (a/e) nothing
307	estimates how many weeks your pregnant and how many test inside.
352	that it gives you the results days before your period and gives you the weeks of your pregnancy
431	it a pregnancy test which has an estimator on how many weeks your pregnant. And make sure you visit a doctor if you are pregnant
479	IS THAT HOW PREGNANT YOU ARE A/E HOW MANY WEEKS
483	It is the easier pregnancy test, turns blue if positive and indicates how many weeks pregnant I might be.
519	NOT ONLY DOES IT TELL YOU WHEN YOUR PREGNANT A/E BUT IT ALSO TELLS YOU HOW MANY NUMBER OF WEEKS

⁸ All Test Group responses that are counted in Categories 1 or 2 are reproduced in the body of the report. All Control Group responses that are counted in Categories 1 or 2 are reproduced in Appendix H. All responses are reproduced verbatim as typed in by interviewers, including typos or spelling errors.

543	Its an advanced pregnancy test with a digital reader and it also tells you how many weeks you are pregnant.
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The other 23 respondents gave answers that strongly suggest that the product estimates the number of weeks pregnant but using different language (Category 2 mentioned above). The following are the verbatim responses of these respondents to the main messages question:

ID #	<u>Verbatim Response to Main Messages Question</u>
70	The message is that it is pink or blue so it could be a boy or girl and it will tell you the next day. It will tell you how far along. I also like that it has 2 tests
85	To find out better results if you think you are pregnant and to find how far along you are a/e Its a more accurate test
114	It's a good product, tells you how far along you are with your pregnancy. Made by a really good brand.
162	An early pregnancy detection a/e information how to use it and how soon you are pregnant. estimated weeks on how far along you are
171	Find out if you are pregnant and how far along you are
177	THAT IT CAN TELL YOU IF YOU ARE PREGNANT AND ALSO HOW FAR ARE YOU A/E NO
194	It is telling you that it can predict pregnancies up to five days before the period and it should tell you about how far along you are up to four or three plus weeks
218	itll tell you how many weeks you are and itll give you results sooner
255	It is a test that will tell you how far along you are.
268	IT TELLS YOU HOW MANY WEEKS ARE YOU A/E NO
279	That it is advanced and can tell you how far along you are pregnan a/e no thats really it
295	It can tell you how far along you are.
299	it estimates how far along you are.
319	you can predict your pregnancy and it will tell you how many weeks are you a/e no
323	it tells you how far you are on your pregnancy.like in weeks
404	Pregnancy test with estimated amount of weeks along in pregnancy
425	how far along you are
441	That it has the how far along you are
444	THAT YOU CAN TELL HOW PREGNANT YOU ARE JHOW FAR ALONG AND YOU CAN FIND OUT QUICKLY BEFORE YOUR MISSED PERIOD
466	that its cleara and a clear test and tell up to how many weeks you are
487	To see how early you are if you are pregnant and tell if you are not

510	it tells me how long I'm pregnant for.
552	Let you if you can find out if you are pregnant early and to find out how weeks you are along.

In contrast, no respondents answered that the product estimates weeks since ovulation (or any other answer recognizing that the estimate is based on date of ovulation).

Other Messages Question

In response to the other messages question, 36 respondents (18.0%) gave answers indicating a belief that the Product estimates the number of weeks a woman is pregnant.

Fourteen respondents explicitly answered that the product estimates the number of weeks pregnant (Category 1 mentioned above). The following are the verbatim responses of these respondents to the other messages question:

ID #	<u>Verbatim Response to Other Messages Question</u>
61	Other than what it said about the how many weeks pregnant its no different than any others a/e no
92	digital and tells you how many weeks pregnant you are
119	you can tell how many weeks you are pregnant and is more specific when telling you a/e no
181	That the test can tell you if you how many weeks pregnant you are. And how accurate it is according to when you take the test.
251	it tells you how the results come out. or 2 or 3 weeks pregnant or not pregnant
262	there are two test strips and it tells you how many weeks pregnant you are.
271	depending on the weeks...1 to 2, 3 to 4, 5 to 6, it will show how many weeks you are pregnant
330	it let you know ho many weeks you are pregant the sooner the better.
349	It will tell you if are pregnant as far as your weeks.
373	it tells you the exact weeks you are pregnant a/e no
423	estimated how many weeks you are pregnant
535	IT COMMUNICATED THAT IT SHOWS YOU HOW MANY WEEKS YOUR PREGNANT A/E NO
546	The digital indicator lets you know the amount weeks pregnant you are.
551	the results 5 days sooner a/e tells you how many weeks you are pregnant.

The other 22 respondents gave answers that strongly suggest that the product estimates the number of weeks pregnant but using different language (Category 2 mentioned above). The following are the verbatim responses of these respondents to the other messages question:

ID #	<u>Verbatim Response to Other Messages Question</u>
29	it tells me how far I'm
78	tells you how far along you are w/e get result 5 days or sooner t/a
104	there are two test in the box and it will tell you how far along you are
108	that it had digital reader and can you tell how far along you are
116	its a pregnancy test and can notify how many weeks i would be if i was pregnant
117	it will tell you exactly how many weeks you are
164	mostly how far it can tell in the pregnancy
177	NOTHING AT ALL, IT DETACTS HOW FAR YOU ARE IN YOUR PREGNANCY A/E NO
188	It will tell you one to two or how many weeks you are.
220	it tells you how many weeks you are
259	Digital. That it is easy steps, not a complicated pregnancy test. w/e...More for your money...you get two tests instead of one. And it is more advanced. It will tell you how far along you are instead of finding out from a doctor.
281	it shows how many weeks you are. or far along you are in your pregnancy
290	It tells you how far you are.
314	That it was 5 days sooner and that it was probably better than traditional tests. A/E The results are 5 days sooner and you can tell how many weeks you are
344	estimate how many weeks you are
357	it will tell you if you are pregnant and then after that it will tell you how long are you and it will let you know if you are not pregnant a/e nothing else
389	It tell you sooner if you are pregnant. A/E It tells you how many weeks along in your pregnancy than others may do more accurately.
426	That its a pregnancy test that can tell you how far you are pregnant.
437	it will tell you how far a long you are up to 6 weeks.
495	at it can tell you how far along you are
514	IT TELLS YOU WITH IN WEEKS TO ESTIMATE HOW PREGNANT YOU ARE A/E NO
554	That is will give me results so far ahead. As far long as to when you are pregnant.

In contrast, no respondents answered that the product estimates weeks since ovulation

(or any other answer recognizing that the estimate is based on date of ovulation).

Combined Main/Other Messages Results

Combining the responses to the main messages and other messages question without double-counting respondents who gave an answer referring to weeks pregnant in both questions, a total of 74 respondents in the Test Group (37%) gave an answer explicitly indicating or strongly suggesting that the Product estimates weeks of pregnancy. Only 4.5% answered that the Product estimates weeks since ovulation.

Given that these verbatim answers came in response to the most general, non-suggestive open-ended questions, these patterns of verbatim answers are strong evidence that consumers overwhelmingly understand the package to communicate that the Product estimates number of weeks pregnant and not that the estimate is of weeks since ovulation.

Comparison to the Control Group 1

As detailed earlier, Control Group 1 utilized a package that was altered to attempt to reduce the tendency of the package to communicate that it estimates the number of weeks a woman is pregnant.⁹

The following table compares the results of the Test Group and Control Group 1:¹⁰

⁹ As also indicated earlier, the package in Control Group 2 was not altered to attempt to reduce the communication that the product estimates weeks of pregnancy. Accordingly, Control Group 2 is not an intended or appropriate comparison for the Test Group open-ended answers indicating that the Product estimates the number of weeks pregnant.

¹⁰ The Net numbers in this and other tables represent the total number of respondents who gave the relevant answer in at least one of the two questions without duplicating respondents who gave an answer counted in both questions. Accordingly, the net numbers are typically lower

<u>PRODUCT ESTIMATES WEEKS</u> <u>PREGNANT</u>	<u>TEST GROUP</u>	<u>CONTROL</u> <u>GROUP 1</u>	<u>NET</u>
MAIN MESSAGES	20.0%	7.5%	12.5%
OTHER MESSAGES	18.0%	6.0%	12.0%
NET	37.0%	13.0%	24.0%

As this table shows, the net level of confusion/deception from the initial, general, open-ended questions after fully accounting for the Control Group Result is, **at a bare minimum**, 24.0%. Accordingly, even without considering any additional evidence of deception from the subsequent questions focusing on the Weeks Estimator feature, the main and other messages questions, standing alone, reliably establish that the Original Package misleadingly communicates that the Product estimates weeks pregnant.

It is also important to note that this net result is a very conservative one in that it assumes that the entire Control Group 1 results are "noise" resulting from pre-existing beliefs, guessing, inattention, or other survey or respondent error that should be deducted from the level of deception illustrated by the responses to the main and other messages questions (Questions 200 and 201) of the Test Group shown the Original Package. In fact, it is highly likely that, despite my attempts to minimize the extent to which the Control Group 1 modified Original Package communicates that the Weeks Estimator feature estimates how many weeks a woman is pregnant, the Control package still communicates this message to a significant degree. That is because, even in the Control package, the Product is still identified by its name, i.e., "Clearblue Advanced Pregnancy Test with Weeks Estimator." Simply put, when a pregnancy test bears a name that includes the phrase "Weeks Estimator", it is likely many consumers would take away the message that the "Weeks" the Product is estimating is "Weeks Pregnant", even when the Control product label states that the product "cannot be used to determine how many weeks you are pregnant." The fact that far more respondents

than the sum of the results to the individual questions, which can include the same respondent counted in both questions.

in Control Group 1 shown a modified version of the Original Package indicated that the Weeks Estimator function estimates weeks pregnant than responded that it estimates weeks since ovulation suggests that the former message is communicated so strongly by the phrase “Weeks Estimator” that it is virtually impossible to eliminate the “number of weeks pregnant” message through the addition of a disclaimer and alterations to the visual and verbal message of the Original Package but without changing the Product name. Accordingly, the Control Group is likely detecting genuine confusion. Assuming such confusion to be “noise” that is deducted from the Test Group result – as I did -- yields a figure that, to a virtual certainty, is very conservative and under-estimates the true amount of deception.¹¹

Weeks Estimator Open-Ended Questions

Respondents in the Test Groups and Control Groups 1 and 2 were next asked a question to determine whether or not they noticed that the Product package they were shown mentioned a Weeks Estimator. The following percentage of respondents answered affirmatively in each group:¹²

Test Group: 85.5%

Control Group 1: 83.5%

Control Group 2: 87.5%

¹¹ Many of the verbatim answers of the Control Group 1 respondents expressly link the “Weeks Estimator” name with the message that the Product estimates how many weeks a woman is pregnant. See, for example, Control Group 1 participant number 729 (“weeks estimator can be used to determine how many weeks you are pregnant”); Control Group 1 participant number 657 (“That it gives you an estimate of weeks pregnant you are”) . All of the verbatim responses of the Control Group 1 participants communicating a “weeks pregnant” message can be found at Appendix H.

¹² Neither Control Group was a control for this filter question, as neither eliminated the message that the product has a Weeks Estimator. It is expected and appropriate that the results to this question – i.e., the percent that reported that they noticed mention of a Weeks Estimator – were equivalent across all three groups.

Respondents who answered affirmatively were then asked two questions about the Weeks Estimator.

Communications about Weeks Estimator

Responses to the questions regarding the Weeks Estimator were analyzed together. If respondents gave an answer in either question that fell into Category 1,¹³ that respondent was coded as Category 1 (unless the respondent also gave an answer referring to an estimate of weeks since ovulation or any other related answer).

Respondents who did not give an answer that fell into Category 1 but gave one that fell into Category 2 were coded as Category 2 (again, unless the respondent also gave an answer referring to an estimate of weeks since ovulation or any other related answer).

Respondents who gave an answer in either question that indicating a belief that the product estimates weeks since ovulation or otherwise indicating an understanding that the estimate was based on ovulation were coded as Category 3.

In response to the Weeks Estimator questions, 104 respondents in the Test Group shown the Original Package (52% of all Test Group respondents) gave at least one answer indicating a belief that the Product estimates weeks pregnant (and did not say anything indicating an understanding that the estimate is based on ovulation).

Of those 104 respondents, 53 explicitly answered that the Product estimates the number of weeks pregnant (Category 1 mentioned above). The following are the verbatim responses of these respondents to the Weeks Estimator questions:¹⁴

¹³ As explained earlier, Category 1 included responses that explicitly state that the Product estimates "weeks pregnant" or an equivalent use of the word "weeks" in connection with "pregnant" or "pregnancy." Category 2 included responses if they strongly suggest that the Product estimates "weeks pregnant" but did not explicitly use those terms.

¹⁴ Both responses to the Weeks Estimator questions are shown even if only one answer was coded in Category 1.

ID #	<u>Verbatim Responses Weeks Estimator Questions</u>	
61	That you can find out how many weeks pregnant you are with a positive result a/e no	How many weeks pregnant you are a/e no
71	There was percentages on the back of the box don't know if it was for days or weeks it did not say a/e Just the picture indicatates how many weeks pregnant you are	How many weeks that you are pregnant a/e no
78	saying if your 1-2 weeks 3-4weeks pregant w/e and tell you if not pregnant t/a	about how far along you are w/e get result 5 days sooner than other pregnancy test t/a
85	That it can tell you if you are up to five weeks pregnant a/e Just gives you intervals like one to two three to four and five plus	It gives you an estimated time a/e no thats pretty much it pretty much
92	tells you how many weeks you are pregnant	n/a
94	the exact week amount you are pregnant	tells you the exact week and 5 days earlier or sooner then your missed period
110	1-2 , 2-3, 3 or more and not pregnant a/e 5 days before your missed period.	How many weeks you are actually pregnant a/e and 5 days before your missed period.
114	Basically that it can tell you how far along you are with your pregnancy in weeks, and I really like that.	It tells you how far along you are with your pregnancy in weeks.
119	it tells you 1-2 weeks ,2-3 weeks, 3 or more not pregnant	how many weeks you have been pregnant
125	Within a week, Will estimate pregnancy results	Will estimate weeks of pregnancy
126	they tell you up to three weeks or more	how many weeks pregnant you are
130	Tells you how many weeks you are pregnant	Nothing other than how many weeks pregnant you are.
135	it will tell you how many weeks pregnant you are	it tells you what week you are pregnant
138	Besides letting you know that your pregnant it estimates the weeks your pregnant. A/e No	I don't remember A/e No
162	that it gives you an approximent weeks on how along you are on your pregnancy.	gives the approximent amount of weeks of how pregnant you are.
169	it tells you how far you are pregnant	it gives me an estimate of how far along

	meaning how many weeks.	the pregnancy is.
171	it will tell you how many weeks you're pregnant	tell you if you're either 1 to 2 2 to 3 or 3 or more weeks pregnant
176	It says with Weeks Estimator.	It tells you how many weeks pregnant you are if you are pregnant.
187	That it can tell you how many weeks pregnant you are.	It is easy to read.
188	One to two weeks or two to three weeks.	It only tells you about how many weeks you are pregnant.
194	UP to three or four weeks plus on how long you've been pregnant	Up to three or four weeks plus of how long you have been pregnant
195	it says like how many weeks pregnant	it just seems to say the amount of weeks
220	it tells you how many weeks you are pregnant	it tells you if you're pregnant before you miss your period
227	IT COULD TELL YOU HOW MANY WEEKS PREGNANT YOU ARE	NO
233	HOW MANY WEEK PREGNANT YOU ARE	NOTHING
239	IT STATES HOW MANY WEEKS PREGNANT YOU ARE	NOTHING
250	shows how many weeks you may be pregnant	how far along you are
261	It tells you how many weeks you are pregnant.	It tells you 1-2 weeks, 2-3 weeks, and 3+ weeks.
262	it tells you how many weeks pregnant you are	you have to wait 3 minutes for your results of how many weeks pregnant you are
263	it tell you how many weeks you are pregnant.	how far you are in your pregnancy.
268	IT TELLS YOU HOW MANY WEEKS ARE YOU PREGNANT. A/E NO	NOTHING AT ALL. A/E NO
270	THAT IT WOULD TELL ME HOW LONG IVE BEEN PREGNANT VERY SPECIFIC AND VERY CLEAR	HOW MANY WEEKS IVE BEEN PREGNANT
271	the 1-2, 3-4, 5-6 weeks that you might be pregnant.	how many weeks you may be pregnant.
277	That it states like one to two or three or four and it's digital. ... No	How many weeks pregnant. ... No
307	it will tell you how many weeks pregnant you are up to 4 weeks	how many weeks 1-2 2-3 4 or more
314	It could tell you up to how many weeks.	If you were pregnant about how many weeks you may be.
319	it can tell you if you are one or two weeks and three to four weeks	thats all it was telling me that it can tell you how many weeks are you pregnant

	pregnant.a/e nothing else	a/e no
322	I noticed that it would indicated if I was one and half or two or three weeks pregnant. (AF) No	Nothing (AF) No
332	it will tell you how many weeks you are pregnant. between 1 and 4 weeks. on the other side of the box it says that the earlier you test, the more accurate it is.	it tells you how far into the pregnancy you are.
340	counts how many weeks you are w/e t/a	to see if your 1-5 weeks pregnant w/e t/a
347	It tells you up to five weeks.	How many weeks pregnant you are.
363	tells you how far along you are in the pregnancy w/e t/a	tells you in digital that its 1-4 weeks and up in your pregnancy t/a
373	it tells you how far along are you a/e just that it gives you if you are 1 or 2 3plus weeks pregnant	just that it give you the weeks of how far along are you a/e no
383	One week two weeks, three weeks a/e no	How many weeks pregnant you are a/e no
387	that it's five days sooner	five days sooner and tells you stages of pregnancy in terms of two week intervals, or if you're not pregnant at all
419	1 to 3 plus weeks pregnant	or not pregnant
423	the percentage that you could possibly be pregnant on before missed period and how far along you could be	the weeks that you could be pregnant
447	CAN TELL ME IF IM PREGNANT 1-2 WEEKS 3-4 WEEKS OR NOT	NOTHIN
514	YOU CAN FIND OUT IF YOU ONE TO TWO WEEKS PREGNANT A/E NO THAT IS ALL	NOTHING ELSE
543	the Weeks Estimator gives you the amount weeks pregnant you are.	Results five days sooner than your last mentrual cycle.
544	The box clearly shows that the digital tester stick shows you if your 1-2 weeks pregnant or 2-3 weeks and also 3+ weeks pregnant.Also if your not pregnant.	the exact weeks pregnant you are by your hormone levels digitally.
546	lets you know right away how many weeks pregnant you are.	In your early weeks of pregnancy it tells you the weeks pregnant you are.
548	That this advanced test tells you how many weeks pregnant you are.	It tells you the exact amount weeks pregnant you are in the early stages of pregnancy.

The other 51 respondents gave answers that strongly suggest that the product estimates the number of weeks pregnant but using different language (Category 2 mentioned above). The following are the verbatim responses of these respondents to this question:

ID #	Verbatim Responses Weeks Estimator Questions	
34	is going to tell ypu how far along u are	you going to know how far you are
35	It can estimate if you are pregnant and tell you how far you are.	It can tell me that i can know how far along i am.
70	That it can tell you how far along early	it tell me that it either 1 week or two and I am more informed
72	within 5days w/e shows you how far along you could be t/a	it will show you right away how far along you are w/e t/a
93	it shows you how far along you are. a/e that's it	it just tells you how far along you are. a/e that's it.
104	that it tells you how far along you are	how far along are you
108	it can tell you how far you are along pregnant	just that it can tell me how far I am
123	after you miss your period you can take the test and see if your pregent and tells you how many weeks your are	could find out instead of going to the doctors tells you everything on a stick
128	that you can know if youre pregnant sooner.	how far along you are.
177	IT CAN TELL YOU HOW FAR YOU ARE IN WEEKS A/E NO	NO THAT WILL BE IT A/E NO
181	That it has one.	It doesn't really tell you what the Weeks Estimator does. I would guess that it is the thing that tells you how far along you are but it doesn't really say for sure.
199	It shows how far along you could be in the pregnancy, or if you are not pregnant. there were 4 options	it can give you results 5 days sooner
206	that it tells you how fall along you are	if you 1-3 + weeks
218	it has an estimate of how pregnant you are	how many weeks you are like a week range
244	It told me how it works	It says it can determine how far along you are in your pregnancy

259	That it will tell you how far along you are. 5 days sooner.	that you will get your results 5 days sooner
264	it can determine how far along you are in your pregnancy about up to 5 weeksw/e n/e	That you can know if your pregnant before your missed periodw/e n/e
279	It can tell you if you are one to two weeks two to three or three plus weeks w/e thats all	How far along you are a/e thats it
287	IT COULD LET YOU KNOW FOUR WEEKS SOONER HOW FAR ARE YOU A/E THAT IS ALL	NOTHING ELSE A/ENO
290	It tells you approximately how far along you are.	Five days or sooner.
295	That it can tell you how far along you are	It can tell you how far along you are
298	IT CAN TELL YOU AS FAR AS 3 WEEKS ALONG OR PLUS	JUST THE SAME THING AS EARLY AS ONE WEEK
299	its very accurate.	how far along you are
311	it tells you in weeks	it tells you about how many weeks you are
321	It has one and you can get results 5 days sooner	How far along you are
323	it goes by how many weeks you are.	that it is accurate. it does not tell you about multiple pregnancy.
338	it tells you that you are pregnant so you do not have to take another test	it tells you how far along you are
339	Finding out how far along.	How far pregnant you can be.
344	estimates on how far you could be w/e t/a	if you are 1-4 weeks and up w/e t/a
351	the Weeks Estimator gives you results five days sooner a/e it can tell you how far are you from first week to three and more.	Nothing else a/e no
352	it shows you how many weeks you could be.	its better to take it the day you are supposed to take your period for better results
353	tell you how far along you are	just how far along you are
357	it will show how a long are you and if you are not pregnant a/e nothing else	nothing else.
367	the Weeks Estimator 1-2 weeks , 2-3 weeks, 3- weeks	that it will let me know how many weeks i am
385	It will let you know roughly	I guess it would just pop up like five to six

	how far along you are and imagine you still have to go to your doctor though a/e no	weeks dont imagine it tells you much a/e no
392	the four bottoms they show t/a	how ever far i am. t/a
393	how far along you are	how many week you are t/a
399	how far along you are a/a no	t/a
404	1-2 weeks, 2-4 weeks, 4+ weeks, or not pregnant options	how far along you are
426	How far along you are	That's its within weeks
437	it will estimate up to 6 weeks	it estimates how far along you are
451	HOW FAR ALONG YOU ARE	IT HAS A PRETTY BOX
479	FIND OUT HOW MANY WEEKS ALONG YOU ARE A/E NOTHING	NOTHING
480	1 to 3 months or plus five	how long the pregnancy would be or at the moment
495	tells you how many weeks you are	results are 5 days sooner
502	how many week you are and if your not pregnant	nothing
510	weeks for how long. how soon.	that's all
511	it just tell me that 5 days sooner	how long I'm pregnant for
551	that it will you how many weeks you are	nothing else
552	You can find out how long you are up to six weeks or as less as one week.	How far long you are.
554	About how far back it can estimate how far back your pregnancy began.	It was not 100% accurate but it is an estimate.

In contrast, only one respondent arguably gave an answer recognizing that the Product estimates weeks since ovulation.¹⁵

Again, these verbatims in response to open-ended questions about the Weeks Estimator feature that contain no suggestion about what the Weeks Estimator feature is designed

¹⁵ Respondent 389 indicated the Weeks Estimator tells you when you conceived. I understand that SPD contends that weeks since ovulation is an estimate of the time of conception, and that Church & Dwight disagrees with SPD's position. I have no opinion on the subject, but treated Respondent 389's answer as recognizing that the Product estimates weeks since ovulation to be conservative.

to accomplish overwhelmingly establish that (i) the Old Product package communicates to consumers that the Product estimates the number of weeks a woman is pregnant and (ii) few consumers understand that the Product estimates the number of weeks since a woman ovulated.

It should also be noted that my calculation that, in response to Questions 210 and 215, 52% of respondents gave answers indicating that the Product estimates how many weeks a woman is pregnant is based on the response of all Test Group respondents who were shown the Original Package, including the 29 respondents who saw the Original Package and whose answers did not indicate they were aware that the Original Package referred to a Weeks Estimator. Of the 171 respondents in the Test Group shown the Original Package whose answer to Question 205 indicated awareness that the Package mentioned a Weeks Estimator, the percentage whose answers indicated that the Weeks Estimator estimates how many weeks a woman is pregnant is 60.8%.

Comparison to Control Group 1 Shown a Modified Version of the Original Package

In the Control Group 1 of women shown a modified version of the Original Package, a total of 47 respondents answered in response to at least one of Survey Questions 210 and 215 that the Product estimates how many weeks a woman is pregnant. Those 49 respondents represented 23.5% of all Control Group 1 respondents shown a modified version of the Original Package, (28.1% of all Control Group 1 respondents shown a modified version of the Original Package whose answers to Survey Question 205 indicated that they had noticed the Weeks Estimator reference on the modified Original Package.)

Subtracting this 23.5% result in Control Group 1 from the 52% Test Group result discussed above yields – very conservatively -- a net deception rate of 28.5% with regard to the answers to Survey Questions 210 and 215. The net deception rate would be 32.7% if the denominator is only those respondents who answered that they

understood the Old Package (or the modified version of same) to communicate that the Product estimates the number of weeks pregnant.

The net result of 28.5% or 32.7% in response to Questions 210 and 215 noted above reliably establishes that the Original Package communicates a message that the Product estimates the number of weeks a woman is pregnant. As noted earlier at pages 37-38, these net results are extremely conservative estimates of the rate of deception, in that they were calculated by treating as “noise” all of the Control Group 1 responses indicating that the Product estimates the number of weeks pregnant, when in reality, it is highly likely that the modified Original Package shown to the Control Group 1 respondents did not (and could not) fully eliminate the modified package’s tendency to communicate the same “estimates number of weeks pregnant” message by virtue of its use of the phrase “Weeks Estimator” that the actual Original Package communicated. The connection between the Control Group 1 participants’ recognition of the Old Package’s reference to a “Weeks Estimator” function and the participants’ take-away of an “estimates number of weeks pregnant” message – even where images from the Original Package were removed and an express disclaimer stating that the Product cannot be used to determine how many weeks you are pregnant – readily can be seen in the Control Group 1 responses to the survey’s “Weeks Estimator” questions. *E.g.*, Participant No. 582 (Weeks Estimator “can tell you how many weeks you are pregnant”); Participant No. 702 (Weeks Estimator “estimates the weeks you are pregnant”); Participant No. 1190 (Weeks Estimator tells “how many weeks pregnant you are”; Participant No. 1271 (Weeks Estimator tells “how many weeks that I’m pregnant for”). These answers – and there are many more of them (see Appendix H) – confirm that many and perhaps most of the Control Group 1 participants who took away a “number of weeks pregnant” message did so because they were influenced by the “Weeks Estimator” name, even when other aspects of the Original Package had been modified in order to eliminate other misleading aspects of the Original Package.

Closed-ended Question (220)

Finally, all respondents shown either the Original Package or a modified version of that package were asked a closed-ended question (Question 220) asking if the Weeks Estimator's estimate of weeks is the same estimate a doctor would give or something different:

Based on what the box communicated, do you think the product's estimate of weeks is telling you...

1. The **same** thing as when a doctor gives you an estimate of weeks
2. A **different** thing than when a doctor gives you an estimate of weeks
3. Or, do you not have an opinion

This question was designed to clarify whether those who think the Weeks Estimator estimates the number of weeks a woman is pregnant believe this to be the same estimate a doctor would give them or a different estimate.

The following table shows the results of the Test Group shown the Original Package:

<u>Weeks Estimator's Estimate of Weeks</u>	<u>TEST GROUP</u>
Same as doctor estimate	45%
Different than doctor estimate	23%
Don't know/no opinion	17.5%
Not asked (did not notice Weeks Estimator)	14.5%

As the table indicates, nearly twice as many respondents understand the Weeks Estimator feature to be giving the same estimate of weeks that a doctor would give than a different estimate. If based only on the 171 respondents who noticed the Weeks Estimator and were asked question 220, the results would be as follows:

<u>Weeks Estimator's Estimate of Weeks</u> <u>(BASED ONLY ON SUBGROUP THAT</u> <u>ANSWERED 220)</u>	<u>TEST GROUP</u>
Same as doctor estimate	52.6%
Different than doctor estimate	26.9%
Don't know/no opinion	20.5%

As discussed earlier, Control Group 2 was specifically designed as a control for this closed-ended question – i.e., to determine the extent to which respondents would pick the "same " response option even if the package was altered in an attempt to clarify that the weeks estimate is not the same as what a doctor would give. The modified package shown to Control Group 2 deliberately did not alter the Original Package's cues (including visual cues) that potentially would communicate the message that the Product estimates the number of weeks a woman is pregnant but expressly stated that this estimate is not the same as a doctor would give.

The table below shows the Question 220 results for the Test Group and Control Group 2:

<u>Weeks Estimator's Estimate of Weeks</u>	<u>TEST GROUP</u>	<u>CONTROL</u> <u>GROUP 2</u>
Same as doctor estimate	45%	27%
Different than doctor estimate	23%	51%
Don't know/no opinion	17.5%	9.5%
Not asked (did not notice Weeks Estimator)	14.5%	12.5%

As this table shows, the results of the Test Group and of Control Group 2 are essentially opposite. While nearly twice as many Test Group respondents answered that the Product's estimate of weeks is the same as what a doctor gives, nearly twice as many

Control Group 2 respondents answered that the Product's estimate of weeks is different than the estimate a doctor would give.

If based only on the 171 respondents who noticed the Weeks Estimator and were asked question 220, the results would be as follows:

<u>Weeks Estimator's Estimate of Weeks</u> <u>(BASED ONLY ON SUBGROUP THAT</u> <u>ANSWERED 220)</u>	<u>TEST</u> <u>GROUP</u>	<u>CONTROL</u> <u>GROUP 2</u>
Same as doctor estimate	52.6%	30.9%
Different than doctor estimate	26.9%	58.3%
Don't know/no opinion	20.4%	10.9%

The Control Group 2 results confirm that the clear tendency of Test Group respondents to answer that the Product's weeks estimate is the same as what a doctor would give reflects a genuine perception of the message communicated by the Original Package and cannot be dismissed as the result of any survey or respondent error.

The net 18% difference between the percentage of Test Group respondents and Control Group 2 respondents answering "same" in response to Survey Question 220 further establishes the same thing. At a minimum, the net rate of deception attributable to the Original Package is 18% (or 21.8% if the calculation is based on the number of total respondents who noticed that the Original or modified Original Package referred to a "Weeks Estimator.") Moreover, as discussed earlier, these net numbers likely are very conservative, because they treat all "same as a doctor's estimate" responses by members of Control Group 2 as "noise" that does not reflect actual deception resulting from the package the Control Group 2 respondents were shown. But in the context of this survey, assuming that the Control Group 2 "same as a doctor's estimate" responses are all merely "noise" is not a reasonable assumption.

Recall that the modified Original Package shown to Control Group 2 respondents was identical to the Original Package with the sole difference being that the modified package contained an express disclaimer stating that “Estimate of Weeks is NOT the same estimate that a doctor would give you.” As shown at pp. 48-49, the Original Package communicated to a large percentage of respondents what I understand to be the false message that the Product’s estimate of weeks is the same estimate a doctor would give. My hypothesis in designing the modified Original Package shown to Control Group 2 was that the express disclaimer that the Product’s weeks estimate was **not** the same as a doctor would give would substantially reduce if not minimize any deception resulting from the other elements (both written and visual) of the Original Package. In fact, while the express disclaimer inserted into the modified Package shown to Control Group 2 respondents did vastly reduce the level of deception, it did not eliminate it. Given the content of the Original Package (which was replicated in the modified Control Group 2 package) I do not believe it is reasonable to treat all of those Control Group 2 respondents who answered “same as a doctor’s estimate” in response to Question 220 as inattentive or inadequately intelligent. To the contrary, it is common for typical, reasonably attentive consumers either to not see or not appreciate the significance of a disclaimer, particularly where other elements of an advertising communication are eye-catching or otherwise communicate a clear message.

In short, I cannot reduce to a specific number the percentage of Control Group 2 respondents who were genuinely and reasonably confused by the Control Group 2 package into believing that (despite the disclaimer), the Product’s estimate of weeks is the same as a doctor would give, as opposed to inattentive. But I can say that in this particular case, reducing the percent of the Test Group deceived by the Old Package into believing that the estimate of weeks given by the Weeks Estimator is the same as a doctor would give by the percentage of Control Group 2 respondents who answered “same as a doctor’s estimate” in response to Question 220 would significantly understate the level of deception caused by the Original Package.

Open-end and Closed-ended responses from Weeks Estimator Questions

The most conservative way to look at the data, applying the strictest possible criteria to count a respondent as deceived, is to examine the percentage of respondents who both answered that the Product estimates the number of weeks a woman is pregnant in response to one of Questions 210 and/or 215 and answered in response to Question 220 that the Weeks Estimator's estimate of weeks is the same as a doctor's.

In the Test Group, 30.5% of respondents gave both answers (or 35.7% of those respondents who noticed that the Original Package referred to a Weeks Estimator).

In Control Group 1, 11.5% of respondents gave such answers (or 13.8% of those respondents who noticed that the package they were shown referred to a Weeks Estimator).

Accordingly, the **minimum** net rate of deception would either be 19.0% or 21.9% depending on the base used, even if the analysis discounted all respondents who answered that the Product estimates the number of weeks a woman is pregnant in response to the open-ended questions 210 or 215 but then did not answer in question 220 that the Product's estimate is the same as what a doctor would give. As I discuss immediately below, I believe the actual rate of deception is significantly higher, but even the rate of deception I noted above is easily sufficient in my judgment to establish that the New Package falsely communicates that the Product provides the same estimate of how many weeks a woman has been pregnant as a doctor would. The reasons why I used the word "minimum" in the first sentence of this paragraph are two-fold: first, for the same reason I discussed previously, including at pp. 37-38; and second, because limiting the Test Group respondents counted as deceived to those who **both** answered in response to the Weeks Estimator questions (Questions 210 and 215) that the Product estimates weeks pregnant and answered "same as doctor's estimate" in

response to Question 220 understates the extent of deception caused by the Original Package .

Questions 210 and 215 (i) were asked only of respondents who recalled that the package referred to a “weeks estimator” and (ii) are open-ended questions answered in the respondents’ own words. As I have previously described, approximately 60% of the Test Group respondents asked Questions 210 or 215 gave answers clearly indicating they understood the Original Package to communicate that the Product estimates number of weeks pregnant. But what about the answers of the remaining 40% of Test Group respondents? Of those, very few, if any, gave answers indicating they believed that the Original Package **did not** communicate a weeks pregnant message, or that they understood the weeks pregnant message to be based on weeks since ovulation. Instead, standing alone, the answers to Questions 210 and 215 of this “40% segment” of the Test Group simply did not allow me to know, one way or the other, whether they understood the Package to communicate an “estimates number of weeks pregnant” message.

However, 29 Test Group respondents (14.5%) whose answers to Questions 210 and 215 were unclear answered in response to Question 220 that the Original Package communicated that the “weeks estimator” function provides the same estimate as a doctor does. That answer to Question 220 would not make sense unless those respondents understood the Product to estimate the number of weeks pregnant, just like doctors do. To be ultra-conservative, I did not include in my net deception numbers on page 51 any Test Group respondent whose answers to Questions 205 and 210 did not clearly indicate they took away a “number of weeks pregnant” message, even if their answer to Question 220 indicated that they did receive such a message. In my opinion, the effect of my not including those respondents further under-estimates the percentage of consumers deceived by the Original Package.

Summary of Results Regarding Old Package

The following table summarizes the results discussed above.

The NET column shows the difference between the Test Group and the Control Group that is the relevant comparison for that question.

In the rows regarding the Weeks Estimator questions, the top percentage in each box is based on all respondents in the group and the bottom percentage is based on the subgroup who noticed the Weeks Estimator and were asked the relevant question.

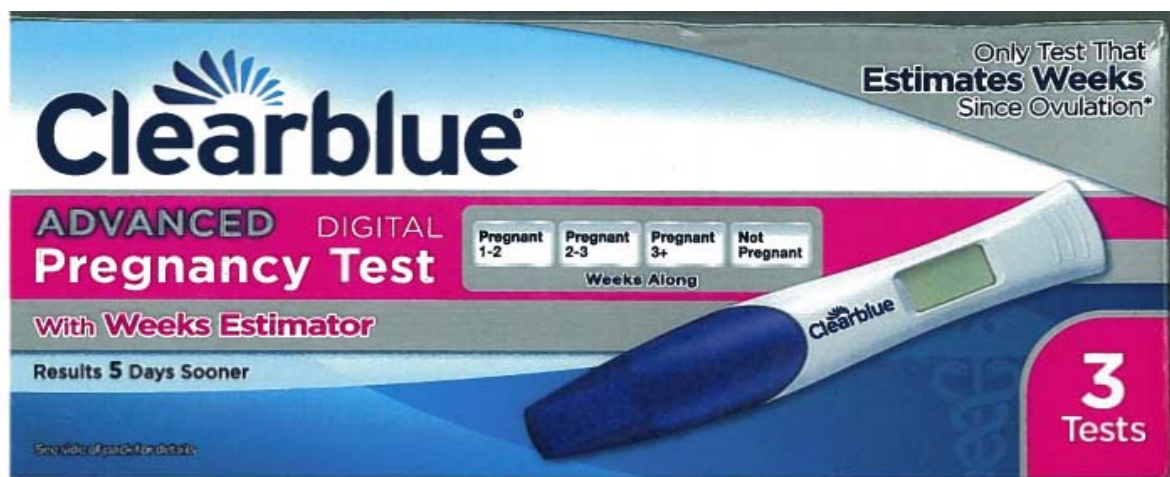
RESULTS	TEST	CONTROL 1	CONTROL 2	NET
Main Messages Question (estimates weeks pregnant)	20.0%	7.5%	N/A	12.5%
Other Messages Question (estimates weeks pregnant)	18.0%	6.0%	N/A	12.0%
<u>NET (Main/Other Messages)</u>	37.0%	13.0%	N/A	24.0%
Weeks Estimator Questions (estimates weeks pregnant)	52.0% 60.8%	23.5% 28.1%	N/A	28.5% 32.7%
Closed-Ended Question (same estimate as doctor gives)	45.0% 52.6%	N/A	27% 30.1%	18.0% 21.8%

Conclusion on Old Package

Regardless of whether looking at the initial open-ended questions, the questions focusing on the Weeks Estimator, the closed-ended question, or the combined data, the results overwhelmingly demonstrate that the Old Package communicates what I understand to be the false messages that the Product estimates the number of weeks a woman is pregnant and that the Product's estimate of weeks is the same number that a doctor would give.

II. RESULTS FOR NEW PACKAGE

This section discusses the results relating to the New Package:



Main Messages Question

The survey questions answered by the Test Group, the Control Group 1 and Control Group 2 respondents who were shown the New Package or, in the case of the Control Groups, modified versions of the New Package, were identical to the survey questions answered by the Test and Control Groups who were shown the Original Package or modified versions of the Original Package. In response to the main messages question (Question 200), 51 Test Group respondents (25.5%) gave answers indicating a belief that the Product estimates the number of weeks a woman is pregnant.

Sixteen respondents explicitly answered that the Product estimates the number of weeks pregnant (Category 1 mentioned above). The following are the verbatim responses of these respondents to the main messages question:

ID #	Verbatim Response to Main Messages Question
192	That it can indicate pregnancies in weeks and it can be detected in an early

	stage.
222	its the only product that tells you the estimation in weeks of pregnancy
226	Clear results. The fact it tells you your pregnancy by the weeks. 5 day response
232	ADVANCED PREGNANCY TEST A/E THAT CAN ESTIMATES HOW MAN WEEKS PREGNANT YOU ARE.
265	it shows how many weeks pregnant you may be.
327	about how many weeks pregnant you are
334	it will tell you how many weeks your pregnant
336	how many weeks along you were pregnant
360	it can determine how many weeks you are pregnet
377	the pregnancy test not only tell you if you are or not pregnant but also tells you how many weeks are you a/e no
384	It can tell you if your are pregnant sooner than most products and it can tell you in weeks a/e Its a good product by the colors that they use just looks well put together
407	that if you are pregnant the test will tell you how many weeks you are
429	This product shows that your pregnant 5dys sooner. I can see how many weeks pregnant I am. Gives great details.
460	its a pregnancy test that shows you how many weeks you are pregnant.
498	i know it was something about a digital pregnancy test that estimates the weeks pregnancy. ... no, that's the main thing
512	That you can know that you are pregnant days sooner. The weeks you are pregnant.

The other 35 respondents gave answers that strongly suggest that the New Package communicated to them that the Product estimates the number of weeks a woman is pregnant but using different language (Category 2 mentioned above). The following are the verbatim responses of these respondents to the main messages question:

ID #	<u>Verbatim Response to Main Messages Question</u>
79	The main thing that is if you think you are pregnant you can tell about how many weeks along you are a/e no
86	5 days sooner w/e gave you a estimate on how far along in the pregnancy t/a
91	pregnancy test w/e estimate how far you are in the pregnancy t/a
112	how far out you are basically (a/e) no
178	That it could tell you how many weeks you are if you are pregnant.
221	that it tells you how far along in your pregnancy you are
228	Tell you how many weeks you are
229	it can tell you how long are you in your prenancy. a/e and if you are pregnant yes or no.

269	It will tell you how many weeks along you are if you are pregnant
272	that is advance in the preganancy and also it tells you how far you are a/e and it tells you wheter or not you are pregnant.
280	how many days you miss your menstrual period the average percentage and how many weeks your along
283	the advanced pregnancy test. and how far you are
288	pregancy advance test it can tell you how far along you are quick results
291	it detects early enough and an estimate of how many weeks you are
294	Can tell how far long I am pregnant and it's digital
335	The pregnancy of how many weeks along you are.
343	to ESTIMATE PRETTY MUCH HOW FAR ALONG YOU ARE.
364	you can tell how far along you are but its not to be taken word of saw see your dctor instead
372	when you take the test is that it tells you one to three weeks along are you a/e no
374	its a pregnancy test that tells you how far along are you a/e no
422	I can detect how far along you are on your pregnancy. ... it's better to take it as close to your missed peroid as possible but it can as close as four days before.
433	how far along i am ,
445	a pregnancy test and the speed of knowing how far along you are pregnant
450	Pretty much that it can tell you if you are pregnant and how far along you are.
452	its the newest and it tells you quick and it tells you how far along you are a/e no
469	It tells you how far along you are
476	how many month that your pregnant that it is faster then going to a doctor
486	To see if you are pregnant and how far along you are
500	The box had some instructions for telling if pregnant and how far along.
516	THAT YOU CAN TELL WITH IN WEEKS HOW PREGNANT YOU ARE A/E SOONER THAN ANY OTHER TEST
523	UM THAT IT HAS RESULTS FIVE DAYS SOONER A/E IT CAN PREDICT HOW FAR LONG YOU ARE WITH THE PREGNANCY
529	it tells me about the pregnant. tells me about how soon.
531	its good. its better then I had before. it tells me how many week I'm
553	I think it was early detection of pregnancy (ae) also that it can guess how many weeks you are
556	that it would tell me if I am pregnant or not and how many weeks along I would be (ae) if I was more then four weeks then my period it would be 65 or less percent accurate

In contrast, only 9 respondents (4.5%) answered that the Product estimates weeks since ovulation (or any other answer recognizing that the estimate is based on date of

ovulation).¹⁶

Other Messages Question

In response to the open-ended other messages question (Question 201), 20 respondents (10.0%) gave answers indicating a belief that the product estimate number of weeks pregnant.

Four respondents explicitly answered that the product estimates the number of weeks pregnant (Category 1 mentioned above). The following are the verbatim responses of these respondents to the other messages question:

ID #	<u>Verbatim Response to Other Messages Question</u>
40	it will tell you how many weeks your pregnant for
275	The pregnancy test also tells you how many weeks pregnant you are.
354	the estimator tells you if you are one or more weeks pregnant. a/e no
414	It is a digital test.A/E it is a brand that has an ovulation kit too.It can also tell you how many weeks pregnant you are.

The other 16 respondents gave answers that strongly suggest that the product estimates the number of weeks pregnant but using different language (Category 2 mentioned above). The following are the verbatim responses of these respondents to the other messages question:

ID #	<u>Verbatim Response to Other Messages Question</u>
75	A secondary message would be the number of weeks that you have come along in the pregnancy a/e That the pregnancy test has high accuracy and its best to go to a doctor
137	it tell you exactly how far along you are
228	Weeks you are
316	Just that you can tell sooner that you are pregnant. A/E It tells you how many weeks you are.
335	It is an at home pregnancy test. It also shows how far long you are.

¹⁶ 65, 102, 236, 297, 313, 329, 354, 412, 438

336	how many week along what your chances are to being pregnant a number to call if you are pregnant .
356	how many weeks you are w/e t/a
362	teslls you how far along you are w/e but in weeks t/a
372	thats pretty much it that what really caught my eye because this pregnancy test tell you how for along are you pregnant a/e nothing else
379	it also tells you approximately how far along you are. a/e no
406	it did time spans of how far along you are
436	how many days along you may be
442	just that it can tell you how many weeks your along
503	it shows how many weeks a long you are a/e nothing
518	how many weeks a long you are a/e a digital week estimator
547	TO LET U KNOW HOW MANY WEEKS YOU ARE

In contrast, only 4 respondents answered that the product estimates weeks since ovulation (or any other answer recognizing that the estimate is based on date of ovulation).¹⁷

Combined Main/Other Messages Results

Combining the responses to the main messages and other messages question (Questions 200 and 201) without double-counting any respondents who gave an answer referring to weeks pregnant in response to both questions, a total of 65 respondents in the Test Group (32.5% of all respondents) gave an answer explicitly indicating or strongly suggesting that the Product estimates weeks of pregnancy. Only 13 respondents (6.5%) answered that the Product estimates weeks since ovulation.

As explained earlier, given that these verbatim answers came in response to the most general, open-ended questions, these patterns of verbatim answers are strong evidence that consumers overwhelmingly understand the New Package to communicate that the Product estimates the number of weeks a woman is pregnant and not that the estimate is of weeks since ovulation.

¹⁷ Respondents 91, 99, 131, 486

Comparison to the Control Group 1

As detailed earlier, Control Group 1 utilized a version of the New Package that was altered to attempt to reduce the tendency of the package to communicate that it estimates weeks pregnant.

The following table compares the results of the Test Group and Control Group 1:

<u>PRODUCT ESTIMATES WEEKS PREGNANT</u>	<u>TEST GROUP</u>	<u>CONTROL GROUP 1</u>	<u>NET</u>
MAIN MESSAGES Question	25.5%	8.0%	17.5%
OTHER MESSAGES Question	10.0%	6.5%	3.5%
NET	32.5%	12.5%	20.0%

As this table shows, the minimum net level of confusion/deception from the initial, general, open-ended questions after accounting for the Control Group 1 result is 20.0%. Accordingly, even without considering any additional evidence of deception from the subsequent questions focusing on the Product's Weeks Estimator function, the main and other messages questions alone reliably establish that the New Package misleadingly communicates that the Product estimates the number of weeks a woman is pregnant without communicating that this estimate is based on weeks since ovulation. (I note that this is the minimum level of confusion/deception for the same reasons set forth at pp. 37-38 and n. 11. Indeed, virtually all of the main message responses of the Control Group 1 New Package participants are consistent with their being deceived by the Weeks Estimator name into believing that the Clearblue pregnancy test can estimate how many weeks a woman is pregnant.)

Weeks Estimator Open-Ended Questions

The following percentage of respondents in each group shown the New Package or an

altered version thereof answered affirmatively when asked in Question 205 whether or not they noticed that the package they saw mentioned a Weeks Estimator:

Test Group: 90.0%

Control Group 1: 86.5%

Control Group 2: 88.0%

Respondents who answered affirmatively were then asked two questions about the Product's Weeks Estimator function (Questions 210 and 215).

Communications about Weeks Estimator

In response to the Weeks Estimator questions, 94 Test Group respondents (47.0%) gave at least one answer indicating a belief that the Product estimates weeks pregnant (and did not say anything indicating an understanding that the estimate is based on ovulation).

Forty-six respondents explicitly answered that the Product estimates the number of weeks pregnant (Category 1 mentioned above). The following are the verbatim responses of these respondents to Questions 210 and 215:¹⁸

ID #	<u>Verbatim Responses Weeks Estimator Questions</u>	
69	results 5days sooner w/e estimates the weeks in pregnancy t/a	tells you how close to how many weeks you are in the pregnancy w/e t/a
91	that it can tell how many weeks pregnant i am w/e t/a	how many weeks pregnany i am , 1 - 2 weeks or more . t/a
99	tells you your exact weeks pregnant	same
102	gives you the exact weeks you are pregnant in the earliest weeks of pregnancy.	looks like it will indicate 3 weeks + for how many weeks pregnant you are.
121	That it predicts how many weeks	Specifically how many weeks pregnant

¹⁸ Both responses to the Weeks Estimator questions are shown even if only one answer was coded in Category 1.

	pregnant you are.	you are.
133	it tells you how many months or weeks pregnant you are	how many weeks you are
137	it tells you how many weeks pregnant you are	nothing else in particular
192	It was just trying to tell you what week in were in as how far long you were. It could estimate the number of weeks that you are pregnant.	How far long you are in your pregnancy.
193	You can get your results five days sooner	only test that shows weeks of pregnancy
201	That it will show you how many weeks you are in the pregnancy.	It just tells you the weeks.
214	you can be 2-3 weeks pregnant 3-4 weeks prg or not preg	how many weeks pregnant you are
217	it is communicating that it can estimate the amount of weeks that you are pregnant	its telling me that I can be three or more weeks along and It still has the ability to tell you
219	that youll find out five days sooner	how many weeks along are you pregnant
221	it tells you if you are 1 or 2 weeks pregnant or more	nothing else
241	ITS SAYS HOW MANY WEEKS PREGNANT YOU ARE	NOTHING
245	TELLS YOU HOW MANY WEEKS PREGNANT YOU ARE A/E NOTHING	NOTHING
247	that can tell you approximately how many weeks you are	about how many weeks you are pergnant
256	It tells you how many days or weeks you are being pregnant.	nothing really. It just tells you how far along you are.
265	that it would show how many weeks you are pregnant	how many weeks you are
273	How many weeks you are within your pregnancy.	It displays how many weeks you are.
285	How many weeks pregnant you are.	You can find out earlier than the average.
286	THAT IT TELLS YOU IF YOU ARE TWO OR THREE WEEKS PREGNANT A/E NO	NOTHING ELSE A/E NO
288	it can estimate if you are 1 to 2 weeks pregnet	not sure
289	Five days sooner	That you can tell how many weeks you are pregnant

294	How many weeks I would be pregnant	Trust them how far along I am
313	you can tel how many weks you are pregnant.	you can find out in mateer of weeks if you are pregant.
325	communicated just that the test comes with a Weeks Estimator results and shows you some examples on the box.	it tells you the weeks that you're pregnant.
327	number of weeks	tells the week up to more than 3 weeks pregnant
334	if you were 1or2 weeks 3or4 weeks or more pregnant	how far along you are
350	that it shows you how many weeks you are w/e t/a	estimates if your 1-2 weeks pregnant w/e t/a
361	tells you how many weeks along pregnant you are w/e t/a	it only estimate weeks w/e t/a
364	that it can be either right now or you just became pregnant or up to weeks that youve been pregnant.	how far along you are up to a month. at that point its just a yes or a no
372	it tells you how far along are pregnant and that it will give you the weeks that you are pregnant a/e no	nothing else a/e no
377	that it gives you a breakdown in how many weeks are you pregnant a/e no	no only that it gives you your results quicker and it breaks it down for you a/e no
391	that it can possibly tell you how many weeks along you are	estimates the pregnancy in two week increments
412	the approximate amount of weeks you are pregnant. ... I think that's it.	how pregnant you are. ... no.
416	That it can tell you approx how many weeks along the pregnancy is	It gives an estamit on how many weeks the pregnancy is
429	The box tells you the test will tell you how many weeks pregnant you are.	How far along I am.
460	how many weeks you are pregnant	1-2 weeks 2-3 weeks pregnant or not pregnant.
481	it should explain things better	I cant tell if it means one to two weeks pregnant not just one or two weeks
498	just that it estimates the weeks of pregnancy. and also i see 1-2 weeks, 2+, and 3+. that's all i remember. ... no.	i mean, just an estimate of how many weeks. ... no.
512	It looks like on the box you can know if you are 1 week pregnant or 1 to 2 weeks pregnant and more than 3 weeks pregnant.	Just how many weeks you are pregnant and it is digital and it is accurate.
515	that it can tell you how many weeks	nothing else

	pregnant you are a/e no	
520	it can tell you 5 days sooner from your last period	can tell you 1-2 weeks pregnant 2-3 weeks pregnant 3 or more weeks pregnant or if you are not pregnant
531	tell me how many weeks I'm pregnant for	how many weeks on pregnant
557	it helps to know how any weeks are you so you have an idea	that it helps you know about how many weeks you are pregnant

The other 48 respondents gave answers that strongly suggest that the product estimates the number of weeks pregnant but using different language (Category 2 mentioned above). The following are the verbatim responses of these respondents to this question:

ID #	<u>Verbatim Responses Weeks Estimator Questions</u>	
40	that it can tell you the weeks	how far along
101	that it result 5 dAYS SOONER w/e t/a	tells me how many weeks i am w/e t/a
112	it said it one to two weeks or three to four or five to six weeks and how you would know how far along you are (a/e) no	how far along you are (a/e) no
118	That it could tell you basically how far along you are.	I don't know
122	That it is only an estimate about how many weeks and in the back had numbers of how accurate it is with your missed period.	how far along you are.
139	that it can tell you how far along you are not how exacting it works.	nothing
178	That it was exact to five days.	How many weeks along you are.
229	It tell you how far along are you a/e no	No, nothing at all.
232	YOU CAN TELL HOW MANY WEEKS A LONG YOU ARE	NOTHING
234	that it can detect up to 3 plus weeks	it tells me more specifically of how far along I may be
238	it can do 1 week 2 weeks 3 weeks or more	how pregnant you are
246	How far along you would be	It is and estimator and doesn't substitute doctors diagnosis
280	tells you how many weeks your	no nothing other then the weeks

	along	
283	its tells you how far you are, if you are pregnant.	its tells if your 1,2,3, or more weeks you are
291	that it will estimate how many weeks you are but its not accurate	how far along you are. that is it.
316	It tells you the amount of weeks.A/E 1 to 2 weeks,2 to 3 weeks or none at all how far you are.	Just that it tells you how far along in the pregnancy you are at the time. A/E It tells you 5 days sooner
331	it can go up to three plus weeks	how far along you are in the pregnancy
335	If you were one to two, two to three are three plus and if you weren't pregnant.	How far long you are in your pregnancy.
336	you find out 5 days sooner after you ovulate how far along you are pregnant	you find out immediately if you are pregnant.
343	It would let you know about how far along you are in your pregnancy. a/e thats all	It tells you how far along you are. a/e thats all
345	That it will tell you if you are pregnant within a couple of weeks if you are pregnant or not.	How many weeks you are.
346	that it was five weeks a/e that is all	nothing else only that it tells how far are you a/e no
354	that it tells you if you are pregnant and how many weeks are along a/e no	nothing else only that it tells how many weeks are you a/e no
365	that it was accurate a/e nothing else	nothing else a/e just that it tells you that it gives you the weeks for a long you are
374	it gives you an estimates in weeks a/e no	it tells you how far along are you and if you are not pregnant a/e no
401	pregnancy test t/a	how far along t/a
402	it will tell you if you are 0-4 weeks plus far through	nothing else
406	how far along you were	it has the percent of how accurate the test is for how far along you are
407	the Weeks Estimator tells you how far along into pregnancy you are if the test is positive	it tells me that depending on how many weeks along you are you should see a doctor
408	exactly how far along you are	5 days resoulttes
414	It can tell you up to 5 weeks how pregnant you are. A/E it is very cool and accurate how it can tell yiu. It is very advanced.	It tell you how far along in your pregnancy you are. A/E it tells you the age of your baby according to your last period

421	5 days sooner you get the results	tells you how many weeks you are
422	you can get a general idea of how far along you are. ... that's about it.	it's for pregnant women. ... the pink gets your attention.
427	to let you know how many weeks you are so you know before hand.	again how many weeks you are so you know before hand.
433	to know exactly how many weeks i am.	what semester i am t/a
436	it tells you how many weeks you may be prior to taking the test	if you missed your period then you may be pregnant
442	just tell you if your [regnet and how many weeks along YOU are	you can test 5 days before your miss period
452	it tells you about about how many weeks you are a/e it tells you five days sooner then other one a/e no	it is good that is has good accuracy a/e no
456	tells you how far along you are	five days sooner you can get the results, and you are barely pregnant and the results will tell you
469	it showed how far along you would be like 5 days sooner	nothing
476	how many weeks along you your were and 5 days sooner if you were to go to a doctor	i dont remember
500	That it will show me how far along I am if I was pregnant. P. That's all.	Nothing more.
507	1-2 weeks 2-3 weeks	how many weeks you are
525	It says it gives you results 5 days sooner	It also says that it can tell how long you are pregnant
532	how many weeks long. 2weeks 3weeks	how long its good for to use.
533	how long that I'm pregnant for	how many weeks
542	It can tell you if you are pregnant 5 days earlier and it can tell you how long you have been pregnant.	It can tell you how far along you are
556	um, depending on how soon before my period or how long after the test would tell me how many weeks along I could be (ae) if I was more then a month before my expected period the test could turn up negative	it estimates weeks it gives you two options you could be one to two weeks or three to four or five to six but it cant give you an exact week (ae) no

In contrast, only 19 respondents (9.5%) possibly answered that the Product estimates

weeks since ovulation (or any other answer recognizing that the estimate is based on date of ovulation).¹⁹

It should be noted that my calculation that 47% of the Test Group respondents shown the New Package gave answers to Questions 210 and/or 215 indicating that the New Package communicates that the Product estimates the number of weeks of pregnancy uses as its denominator the total number of all Test Group respondents shown the New Package (200), including the 20 respondents whose answer to Question 205 did not indicate that they noticed any reference to a Weeks Estimator in the New Package. If I instead use as the denominator only the 180 respondents whose answer to Question 205 indicated that they noticed mention of a Weeks Estimator function in the New Package, and were therefore asked Questions 210 and 215, the percentage of Test Group respondents who understood the New Package to communicate that the Product estimates the number of weeks a woman is pregnant rises to 52.2%.

Comparison to the Control Group 1 Responses

In Control Group 1, a total of 34 respondents (17.0%) answered in response to at least one of the Weeks Estimator questions that the Product estimates number of weeks pregnant, (19.7% if the calculation compares those 34 responses to the subset of 173 respondents who indicated in response to Question 205 that they noticed the reference to “Weeks Estimator” in the modified version of the New Package they were shown, and thus were asked Questions 210 and 215).

Subtracting this 17.0% result in Control Group 1 from the 47% Test Group result yields a **minimum** net deception rate of 30.0% (32.6% if the calculations are based only on the subset of Test Group and Control Group 1 respondents who answered in response to

¹⁹ Respondents 75, 79, 86, 163, 173, 230, 269, 272, 293, 297, 320, 329, 360, 379, 381, 388, 397, 438, 486

Question 205 that they noticed the Weeks Estimator reference on the package they were shown).

This minimum net percentage deceived of 30.0% or 32.6% from Questions 210 and 215 reliably establishes that the New Package communicates a belief that the product estimates number of weeks pregnant. (For the same reasons as previously set forth in detail at pp. 37-38 and n. 11, the above net results are quite conservative).²⁰

Closed-ended Question

The following table shows the results of the Test Group for the closed-ended Question 220 asking if the Product's estimate of weeks is the same that a doctor would give or something different:

<u>Weeks Estimator's Estimate of Weeks</u>	<u>TEST GROUP</u>
Same as doctor estimate	47.5%
Different than doctor estimate	24.5%
Don't know/no opinion	18.0%
Not asked (did not notice Weeks Estimator)	10.0%

As the table indicates, nearly twice as many respondents understand the Weeks Estimator feature to be giving the same estimate of weeks that a doctor would give than a different estimate. If based only on the 180 respondents who noticed the Weeks Estimator and were asked question 220, the results would be as follows:

²⁰ As with the Control Group 1 participants shown a modified version of the Original Package, the responses to the Weeks Estimator questions of the Control Group 1 participants shown a modified version of the New Package also took away from the Package's reference to "Weeks Estimator" the message that the Product estimates or tells users the number of weeks they are pregnant. See Appendix H. These responses strongly indicate that even when modified to remove potentially deceptive visual images and to insert an express disclaimer, the name "Weeks Estimator" communicates a deceptive message, albeit to a much smaller percentage of consumers than the actual New Package does.

<u>Weeks Estimator's Estimate of Weeks</u> <u>(BASED ONLY ON SUBGROUP THAT</u> <u>ANSWERED 220)</u>	<u>TEST GROUP</u>
Same as doctor estimate	52.8%
Different than doctor estimate	27.2%
Don't know/no opinion	20.0%

The following table shows the results for the Test and Control Group 2²¹ compared:

<u>Weeks Estimator's Estimate of Weeks</u>	<u>TEST GROUP</u>	<u>CONTROL</u> <u>GROUP 2</u>
Same as doctor estimate	47.5%	23.5%
Different than doctor estimate	24.5%	54.0%
Don't know/no opinion	18.0%	10.5%
Not asked (did not notice Weeks Estimator)	10.0%	12.0%

As this table shows, the results of the Test and Control Group 2 are essentially opposite. While nearly twice as many Test Group respondents answered that the estimate the Product gives is the same as what a doctor gives than answered that it is different, more than twice as many Control Group 2 respondents answered that the Weeks Estimator's estimate of weeks is different than the estimate a doctor would give than answered that it is the same. This confirms that the Test Group's clear tendency to answer that the estimate of weeks the Product gives is the same as what a doctor would give reflects genuine perception of what the New Package communicates and cannot be dismissed as the product of any survey or respondent error.

²¹ As discussed earlier, Control Group 2 was specifically designed as a control for this closed-ended question – i.e., to determine the extent to which respondents would pick the "same" response option even if the package was altered to clarify that the weeks estimate is not the same as what a doctor would give. The Control Group 2 package intentionally did not alter the potential message of the New Package that the Product estimates the number of weeks pregnant but clarified that the estimate is not the same as a doctor's estimate so that the modified Control Group 2 package could serve as a control for this closed-ended question.

The net 24% difference between the Test and Control Group 2 rate of answering "same as a doctor's estimate" also establishes the same thing. At a minimum, the net rate of 24% deception must be attributed to the message communicated by the New Package and cannot be dismissed as the product of any survey or respondent error. (If the percentage deception is based on the subset of respondents who indicated in answer to Question 205 that they noticed mention of the Weeks Estimator in the New Package or modified version of same, the net deception reflected by the responses to Question 220 would increase to 26.1%).²²

Open-end and Closed-ended responses

The most conservative way to look at the data regarding consumer take-away from the New Package, applying the strictest possible criteria to count a respondent as confused, is to examine the percentage of respondents shown the New Package (or a control variation thereof) who both answered that the Product estimates the number of weeks a woman is pregnant in response to the open-ended questions and answered that the number of weeks estimated by the Product's Weeks Estimator feature is the same as a doctor's estimate.

In the Test Group, 26.5% of respondents gave both answers (or 29.4% of those who noticed in response to Question 220 that the New Package referred to a "Weeks Estimator").

In Control Group 1, 10.5% of respondents gave such answers (or 12.1% of those respondents who noticed that the package they were shown referred to a Weeks Estimator).

²² As discussed earlier, these net results are conservative estimates. See, e.g., p36.

Accordingly, the *minimum* net rate of deception would be 16.0% or 17.3% depending on the base. I believe the actual rate of deception is significantly higher, but even this rate of deception is easily sufficient in my judgment to establish that the New Package falsely communicates that the Product provides the same estimate of how many weeks a woman has been pregnant as a doctor would. (In the first sentence of this paragraph, I use the word “minimum” for the same reasons discussed previously, including at p. 37-38 and at pp. 52-53).

It should also be noted that 42 Test Group respondents (21.0%) whose answers to Questions 210 and 215 were unclear answered in response to Question 220 that the Original Package communicated that the “weeks estimator” function provides the same estimate as a doctor does. As explained earlier in the discussion of the Old Package, that answer to Question 220 would not make sense unless those respondents understood the Product to estimate the number of weeks pregnant, just like doctors do. To be ultra-conservative, I did not include in my net deception numbers on page 70 above any Test Group respondent whose answers to Questions 205 and 210 did not clearly indicate they took away a “number of weeks pregnant” message, even if their answer to Question 220 indicated that they did receive such a message. In my opinion, the effect of my not including those respondents further under-estimates the percentage of consumers deceived by the Original Package.

Summary of Results Regarding New Package

The following table summarizes the results discussed above.

The NET column shows the difference between the Test Group and the Control Group that is the relevant comparison for that question.

In the rows regarding the Weeks Estimator questions (Questions 210 and 215), the top percentage in each box is a percentage of all respondents in the group and the bottom percentage is a percentage of all respondents whose answer to Question 205 indicates

that they noticed that the New Product (or a modified version thereof) mentioned a Weeks Estimator.

RESULTS	TEST	CONTROL 1	CONTROL 2	NET
Main Messages Question (estimates weeks pregnant)	25.5%	8.0%	N/ A	17.5%
Other Messages Question (estimates weeks pregnant)	10.0%	6.5%	N/ A	3.5%
<u>NET (Main/Other Messages)</u>	32.5%	12.5%	N/ A	20.0%
Weeks Estimator Questions (estimates weeks pregnant)	47.0% 52.2%	17.5% 20.2%	N/ A	29.5% 32.0%
Closed-Ended Question (same estimate as doctor gives)	47.5% 52.8%	N/ A	23.5% 26.7%	24.0% 26.1%

Conclusion on New Package

Regardless of whether looking at the initial open-ended questions, the questions focusing on the Weeks Estimator feature of the Product, the closed-ended question, or the combined data, the results plainly and consistently demonstrate that the New Package communicates that the Product estimates the number of weeks a woman is pregnant and that this number of weeks is the same that a doctor would give.

CONCLUSIONS

Based on the results of the survey, it is my opinion that both the Old and New Package misleadingly communicate to a significant percentage of consumers that the Product estimates the number of weeks a woman is pregnant and that this is understood to be the same estimate of weeks pregnant that a doctor would provide.

APPENDIX A

CURRICULUM VITAE OF STUDY'S AUTHOR

Hal L. Poret

(*hal.inc42@gmail.com; 914-772-5087*)

Education

- 1998 Harvard Law School, J.D., *cum laude*
- Editor/Writer – Harvard Law Record
 - Research Assistant to Professor Martha Minow
- 1995 S.U.N.Y. Albany, M.A. in Mathematics, *summa cum laude*
- Statistics
 - Taught calculus/precalculus/statistics
- 1993 Union College, B.S. in Mathematics with honors, *magna cum laude*
- Phi Beta Kappa
 - Resch Award for Achievement in Mathematical Research

Employment

- 2004 - Senior Vice President, ORC International
- Designed, supervised, and analyzed over 600 consumer surveys, including Trademark, Trade Dress, Advertising Perception, Fraud/Consumer Deception, Claims Substantiation studies, Damages, and Corporate Market Research Surveys
 - Provided expert testimony at deposition and/or trial regarding survey research in over 50 U.S. District Court litigations and proceedings in front of TTAB, NAD and the FTC.
 - Review and comment on third party surveys
- 2003 – 2004 Internet Sports Advantage
- Developed and marketed proprietary internet sports product, and licensed trademark and intellectual property rights.
- 1998 – 2003 Attorney, Foley Hoag & Eliot, Boston, MA
- Represented corporations and individuals in trademark, trade dress, advertising, product, and related legal disputes.
 - Worked with survey experts in developing and using surveys as evidence in trademark, trade dress and advertising disputes.
 - Advised clients in the selection, adoption, use, licensing, and protection of trademarks/trade dress; represented clients in trademark/trade dress litigations, administrative proceedings before the Trademark Trial and Appeal Board and United States Patent and Trademark Office, and domain name proceedings under the Uniform Domain-Name Dispute-Resolution Policy.

Testimony at Trial or by Deposition

(Party who retained me shown in bold)

2014	Scholz v. Goudreau (Deposition)	USDC District of Mass
2014	Economy Rent-A-Car v. Economy Car Rentals (TTAB Testimony)	USPTO
2014	Weber v. Sears (Deposition)	USDC Northern District of IL
2014	Native American Arts v. Stone (Deposition)	USDC Northern District of IL
2014	Gravity Defyer v. Under Armour (Trial)	USDC Central District of CA
2014	Adams v. Target Corporation (Deposition)	USDC Central District of CA
2014	PODS v. UHAUL (Deposition and trial)	USDC Middle District of FL
2014	Flushing v. Green Dot Bank (Deposition)	USDC Southern District of NY
2014	Amy's Ice Creams v. Amy's Kitchen (Deposition)	USDC Western District of TX
2014	Quoc Viet v. VV Foods (Deposition)	USDC Central District of CA
2014	Unity Health v. UnityPoint (Deposition)	USDC Western District of WI
2014	In re: NCAA Student-athlete litigation (Deposition and Trial)	USDC Northern District of CA
2014	SpiralEdge v. SeaWorld (Deposition)	USDC Southern District of CA
2014	Diageo N.A. v. Mexcor (Deposition)	USDC Southern District of TX

2014	Pam Lab v. Virtus Pharmaceutical (Deposition)	USDC Southern District of FL
2014	US Soccer Federation v. Players Ass'n (Arbitration Testimony)	Arbitration
2014	Estate of Marilyn Monroe v. AVELA (Deposition)	USDC Southern District of NY
2014	Kelly-Brown v. Winfrey, et al. (Deposition)	USDC Southern District of NY
2014	Virco Mfg v. Hertz & Academia (Deposition)	USDC Central District of CA
2014	In re: Hulu Privacy Litigation (Deposition)	USDC Northern District of CA
2013	Jackson Family Wines v. Diageo (Deposition)	USDC Northern District of CA
2013	Bubbles, Inc. v. Sibu, LLC. (Deposition)	USDC Eastern District of VA
2013	Clorox v. Industrias Dalen (Deposition)	USDC Northern District of CA
2013	Globefill v. Elements Spirits (Deposition and trial)	USDC Central District of CA
2013	Active Ride Shop v. Old Navy (Deposition and trial)	USDC Central District of CA
2013	Macy's Inc. v. Strategic Marks LLC. (Deposition)	Northern District of CA
2013	Karoun Dairies, Inc. v. Karoun Dairies, Inc. (Deposition)	Southern District of CA
2013	Kraft Foods v. Cracker Barrel Old Country (Deposition and Trial)	Southern District of NY
2013	Bayer Healthcare v. Sergeants Pet Care (Deposition and Trial)	USDC Southern District of NY

2013	JJI International v. The Bazar Group, Inc. (Deposition)	USDC District of RI
2013	Fage Dairy USA v. General Mills (Deposition)	Northern District of NY
2013	Gameshow Network v. Cablevision (Deposition)	F.C.C.
2013	Telebrands v. Meyer Marketing (Deposition)	USDC Eastern District of CA
2012	Marketquest v. BIC (Deposition)	USDC Southern District of CA
2012	Hornady v. DoubleTap (Deposition)	USDC District of Utah
2012	Briggs/Kohler Opposition to Honda (Deposition)	TTAB
2012	Apple v. Samsung (Deposition and Trial)	USDC Northern District of CA
2012	Forest River v. Heartland (Deposition)	USDC Northern District of IN
2012	SPD v. Church & Dwight (Deposition)	USDC District of NJ
2012	Brighton Collectibles v. Texas Leather (Deposition)	USDC Southern District of CA
2012	Cytosport v. Vital Pharmaceuticals (Deposition)	USDC Eastern District of CA
2012	Authors Guild v. Google (Deposition)	USDC Southern District of NY
2012	Clear Choice v. Real Choice (Opposition testimony)	TTAB
2011	Borghese v. Perlier et al. (Deposition)	USDC Southern District of NY

2011	My Favorite Company v. Wal-Mart (Deposition)	USDC Central District of CA
2011	PepsiCo v. Pirincci (Opposition testimony)	TTAB
2011	GAP Inc. v. G.A.P. Adventures (Trial)	USDC Southern District of NY
2011	Merck Eprova v. Brookstone (Deposition and trial)	USDC Southern District of NY
2011	Wella, Inc. v. Willagirl LLC (Deposition)	USDC Southern District of NY
2011	Bauer Bros. v. Nike (Deposition)	USDC Southern District of CA
2011	Aviva Sports v. Manley (Deposition)	USDC District of Minnesota
2011	American Express v. Black Card LLC (Deposition)	USDC Southern District of NY
2011	Gosmile v. Dr. Levine (Preliminary Injunction Trial)	USDC Southern District of NY
2010	Nat'l Western Life v. Western Nat'l Life (Deposition)	USDC Western District of TX
2010	3M v. Mohan (Trial)	USDC District of Minnesota
2010	Active Network v. EA Sports (Preliminary Injunction declaration)	USDC Central District of CA
2010	FIJI Water Co. v. FIJI Mineral USA (Deposition)	USDC Central District of CA
2010	Hansen Beverage v. CytoSport (Deposition)	USDC Central District of CA
2010	People's United Bank v. PeoplesBank (Deposition and Preliminary Injunction trial)	USDC District of CT

2010	Don Henley v. Charles Devore (Deposition)	USDC Central District of CA
2010	Pegasus v. Allscripts (Deposition and Mediation)	USDC Middle District of FL
2010	Jelmar, Inc. v. Zep Commercial (Deposition)	USDC Northern District of IL
2010	Dollar Bank v. Emigrant Bank (Deposition)	USDC Western District of PA

Presentations

Cutting Edge Developments in Trademark Surveys (Rocky Mountain Intellectual Property & Technology Institute, May 30, 2013)

Using Survey Experts in Trademark Litigation (DRI Intellectual Property Seminar, May 9, 2013)

Surveys in Trademark and Advertising Litigation (2013 National CLE Conference, Snowmass Colorado, January 2013)

Internet Survey Issues (PLI Hot Topics in Advertising Law Conference, March 2012)

Measuring Consumer Confusion Through Online Surveys (2011 Midwest IP Institute) (September, 2011)

Online Surveys as Evidence in Trademark Disputes (International Trademark Association Annual Conference, May 2011)

Managing Intellectual Property Trademark Roundtable (April 7, 2010)

Recent Trends in Trademark Surveys (Virginia State Bar Intellectual Property Conference, October 2009)

Trademark Surveys in US Litigation (presentation for International Trademark Association Annual Conference) (May 2009)

How to Conduct Surveys for use in Trademark Disputes (Practicing Law Institute Advanced Trademark Law Conference) (May 2009)

Trademark and Advertising Perception Studies for Legal Disputes (Opinion Research Corporation Seminar, June 2008)

Understanding Advertising Perception Surveys (Promotions Marketing Association Annual Law Conference) (November 2007)

Designing and Implementing Studies to Substantiate Advertising Claims (American Conference Institute Claims Substantiation Conference, October 2007)

Surveys in Trademark and False Advertising Disputes (InfoUSA Webinar, June 2007)

Measuring Consumer Perception in False Advertising and Trademark Cases, (multiple presentations) (2007)

Potential Errors to Avoid In Designing a Trademark Dilution Survey (American Intellectual Property Association paper, April 2007)

Consumer Surveys in Trademark and Advertising Cases (presentation at Promotions Marketing Association Annual Law Conference) (December 2006)

Use of Survey Research and Expert Testimony in Trademark Litigation, (International Trademark Association Annual Conference, May 2006)

Survey Research as Evidence in Trademark/Trade Dress Disputes (multiple presentations) (2006)

Using Surveys to Measure Secondary Meaning of Trade Dress, Legal Education Seminar, Boston, April 2006

Publications/Papers

Cutting Edge Developments in Trademark Surveys (Rocky Mountain Intellectual Property & Technology Institute, May 2013)

Hot Topics and Recent Developments in Trademark Surveys (paper for May 2013 DRI Intellectual Property Conference)

Surveys in Trademark and Advertising Litigation (2013 National CLE Conference, Snowmass Colorado, January 2013)

Trademark Litigation Online Consumer Surveys (Practical Law Company Intellectual Property and Technology, May 2012)

Hot Topics in Advertising Law 2012 (Contributor to Practising Law Institute publication)

A Comparative Empirical Analysis of Online Versus Mail and Phone Methodologies for Trademark Surveys, 100 TMR 756 (May-June 2010)

Recent Trends in Trademark Surveys (paper for Virginia State Bar Intellectual Property conference, October 2009)

Trademark Dilution Revision Act breathes new life into dilution surveys (In Brief PLI website, June 2009)

The Mark (Survey Newsletter; three editions 2009)

Hot Topics in Trademark Surveys (paper for Practicing Law Institute Advanced Trademark Law Conference) (May 2009)

The Mark (Survey Newsletter, 2008)

Trademark and Advertising Survey Report (Summer 2007)

Avoiding Pitfalls in Dilution Surveys under TDRA (AIPPLA Spring Conference, Boston, May 2007)

Commentary

Comment on Hotels.com case (on TTABLOG.COM, July 24, 2009)

Comment on Nextel v. Motorola (on TTABLOG.COM, June 19, 2009)

PLI All-Star Briefing Newsletter, "What does the Trademark Dilution Revision Act mean for the future of Dilution Surveys?" (June 2009)

Professional Memberships/Affiliations

Council of American Survey Research Organizations

International Trademark Association

National Advertising Division of Council of Better Business Bureaus

APPENDIX B

QUESTIONNAIRES
(provided electronically)

APPENDIX C

**FIELD INSTRUCTIONS
(provided electronically)**

APPENDIX D

VALIDATION QUESTIONNAIRE/LETTER

ORC International
315 Park Avenue South
Survey
New York, NY 10010

Job #P63-0314
Pregnancy Test Kit

August, 2014

VALIDATION QUESTIONNAIRE

- ASK TO SPEAK TO THE PERSON WHOSE NAME IS LISTED ON VALIDATION SHEET
- CORRECT ANSWERS ARE CIRCLED
- PROBE WHERE INDICATED

Hello (Miss/Mrs./Ms.) _____, I'm from ORC International in New York. Recently a study was done in your area and we're calling to thank you for your participation and to confirm a few points.

1. Recently, did you take part in a survey at the mall where you were shown a pregnancy test kit and were asked some questions about it?

YES 1

NO 2 *(Before terminating, be sure no one else in household was interviewed)*

2. Which of the following includes your age?

18 years or younger	1	} (Check against validation listing)
18 - 24	2	
25 - 34	3	
.....	4	
35 - 49	5	
.....		
50 + years old.....		

3. If you thought you might be pregnant, which, if any, of the following things would you do? (*Read list. Record "yes," "no," "don't know," or "refused," for each item.*)

	Yes	No	Don't know	Refuse
Call or visit your doctor	1	2	3	4
Use an at-home pregnancy test kit	1	2	3	4
Make lifestyle changes, such as avoiding alcoholic beverages, cigarettes, or certain foods.....	1	2	3	4
Conduct online research about pregnancy	1	2	3	4

Must select “Yes” to “Use an at-home pregnancy test kit” to qualify.

Thank respondent.

Outfielders, Inc.

140 New Street
Mamaroneck, NY 10543
914-777-1137

September 23, 2014

Ms. Nelly Valentin
ORC International
315 Park Avenue South
New York, NY 10010

Dear Nelly,

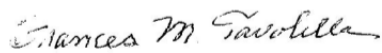
The validation results of your Pregnancy Test Kit Study #P63-0314 are as follows:

Out of the listed 1200 respondent names, 1200 had telephone numbers. Of these, 744 were successfully contacted (62%). Of those not reached, a minimum of three attempts were made on different days of the week and at different times of the day.

Of those contacted, there were no discrepancies found in interviewing procedures. All results of this phase of the study were reported to ORC International.

If you have any questions regarding this study, please call me.

Sincerely,



Frances Murray Tavorilla

APPENDIX E

MATERIALS REVIEWED/FEES CHARGED

In the course of designing the survey and preparing this report I reviewed the following materials:

- Complaint
- Clearblue with Weeks Estimator Packaging
- Survey of Eugene Eriksen submitted by SPD in previous litigation against Church & Dwight.

The fee charged for the survey is \$117,000. Any additional time in connection with this matter will be charge at my ordinary hourly rate of \$575.

APPENDIX F

PHOTOS OF LABELED PREGNANCY TEST KITS



APPENDIX G

DATA FILE
(provided electronically)

APPENDIX H

CONTROL CELL VERBATIM RESPONSES

OLD PACKAGE CONTROL GROUP 1

<u>ID</u>	<u>MAIN MESSAGE RESPONSES COUNTED IN CATEGORY 1</u>
655	It will let you know how many weeks you are pregnant.
657	That it gives you an estimate of weeks pregnant you are. ... that's it
664	basically trying to tell me that it can tell you how many weeks pregnant you are a/e and you get results 5 days sooner
724	HOW MANY WEEKS YOU ARE PREGNANT
1084	weeks estimator (a/e) determines how many weeks you are pregnant
1186	Main message to me is that it estimate the weeks pregnant I am in addition to telling if I am pregnant or not.
1196	its digital it can determine how many week you are in pregnancy
1321	the main message the brand name clear blue a/e can tell how many weeks pregnant you are

<u>ID</u>	<u>MAIN MESSAGE RESPONSES COUNTED IN CATEGORY 2</u>
719	Will tell you if you are or are not pregnant and in how many weeks
826	It tells you how long ago you got pregnant.
985	it can tell in advance how far are you pregnant a/e no
988	it shows how many weeks you are one - two weeks three - four weeks a/e no
1262	that they can tell you how far along you are and you can tell 5 days before your missed period if your pregnant or not.
1330	Tells you how far you are, how long you are.
1412	how many weeks you are

<u>ID</u>	<u>OTHER MESSAGE RESPONSES COUNTED IN CATEGORY 1</u>
576	it can estimate how many weeks you are pregnant
702	tells you how many weeks you are pregnant.
729	weeks estimator can be used to determine how many weeks you are pregnant
847	that it can tell you how many weeks your pregnant
961	It will inform you how many weeks pregnant
985	to tell you how many weeks you are pregnant a/e no
1311	tells you how many weeks pregnant you are a/e no that is all
1497	It's digital, can tell 5 days sooner and can tell you how many weeks you could be along pregnant

<u>ID</u>	<u>OTHER MESSAGE RESPONSES COUNTED IN CATEGORY 2</u>
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686	how far long am
1211	the weeks estimator to tell me about how far along I am.
1232	It estimates how many weeks you are.
1474	To see how many weeks you are at. a/e to call a doctor if its anything other than not being pregnant. a/e thats it

<u>ID</u>	<u>RESPONSES COUNTED IN CATEGORY 1 IN WEEKS ESTIMATOR QUESTIONS (210/215)</u>
582	it can tell you how many weeks you are pregnant.
605	the it can tell you the weeks you are pregnant
634	The it tells you about how many weeks you have being pregnant.
657	how pregnant you are. ... like how many weeks, but not exact
702	estimates the weeks you are pregnant
724	HOW MANY WEEKS YOU ARE PREGNANT
729	that it will tell you earlier than other tests how pregnant you are how amny weeks
801	will tell you how many weeks pregnant you were if pregnant
808	that it will tell me if im a week or 3 weeks pregnant
985	to tell you how many weeks you are pregnant and that is advance pregnancy test a/e no
988	to used it because it shows how many weeks you are pregnant a/e no
995	Also estimation of how many weeks you are pregnant
1084	estimates the weeks you're pregnant but won't if you're having twins (a/e) no
1181	that it will tell you aprox how many weeks pregnant you are.
1190	how many weeks pregnant you are
1201	that according to the information that i provide, the product will give me an estimate on weeks pregnant.
1255	To me it means how many weeks pregnant you are. A/E How far in weeks
1271	how many weeks that I'm pregnant for
1321	tell you exactly the number a weeks you are pregnant
1406	will tell you how many weeks preganat you are if pregnant
1412	how many weeks pregnant
1424	it tells you how many weeks you are pregnant when you take the test
1444	tells you how many weeks pregnant you are
1468	How many weeks pregnant you might be. a/e no.
1471	Can tell you how many weeks pregnant you are or if you are not pregnant
1493	estimates the weeks that you might be pregnant how many weeks based on your last menstrual cycle

<u>ID</u>	<u>RESPONSES COUNTED IN CATEGORY 2 IN WEEKS</u> <u>ESTIMATOR QUESTIONS (210/215)</u>
576	it can estimate how many weeks you are
682	its 1-2 weeks 3 and up in how far in your pregnancy w/e t/a
802	how far along in pregnancy you are
841	that it tells you how many weeks your at.
880	it lets you know how long you have been pregnant
962	it can tell probably how far you are.
996	Think it said that it would tell you about how far along you are a/e no
1012	it can detect how many weeks you are
1032	tells you how far along w/e /ta
1035	how far along you are
1060	that it comes with it it not only tells you if you are but aldo how far along you are
1186	That it estimates how far along pregnant I am.
1211	How far along in pregnancy I am.
1232	It can tell you how many weeks you are.
1262	it can estimate how far along you are during the earliest part of your pregnancy
1270	it can estimate how far along you might be
1274	Pretty much telling you how long you have been pregnant
1316	tells how many weeks you are
1330	That tells you how long you are. I think it said something about a doctors estimate.
1474	It can tell you how far along you are. a/e thats it
1497	Can estimate the how far along you are in weeks and also if you are not pregnant

NEW PACKAGE CONTROL GROUP 1

<u>ID</u>	<u>MAIN MESSAGE RESPONSES COUNTED IN CATEGORY 1</u>
604	mostly you can said how many weeks you are pregnant.
711	its a pregnancy test and it tell you about the weeks. how many weeks your pregnant for
1042	It tells you the weeks of how many weeks pregnant you may be.
1242	that it is a pregnancy test that also tests how many weeks pregnant you are but does not replace going to the doctor. ... no
1275	it was telling about the estimate of weeks of pregnancy. ... it made sure that it basically said that don't substiute it for a physician so go to your doctor. and it gave percentages on how accurate it is for each day. such as fourth day before your missed period, it's 60% accurate. and it gets more accurate as it goes on. and it comes with two tests.
1408	to determine how many weeks you're pregnant. it tells you your pregnant and not how mny weeks you are pregnant.
1482	that is a pregnancy test to see how many weeks you are pregnant a/e no

<u>ID</u>	<u>MAIN MESSAGE RESPONSES COUNTED IN CATEGORY 2</u>
692	to tell me how many weeks i am
850	That this test can tell you clearly on how many weeks it thinks you are
896	i will know how far alone i am
1061	if you are pregnant and how far are you pregnant a/e nothing else
1071	To see if you are pregnant and how many weeks you are a/e no
1099	its a pregnancy test and tells you how far along you are w/eget results sooner t/a
1107	tells you how many weeks along you are w/e looks like it is a good test t/a
1381	a pregnancy test to get an estimation of how far along are you
1430	That it can detect how many weeks I am and that it is digital. Accuracy.

<u>ID</u>	<u>OTHER MESSAGE RESPONSES COUNTED IN CATEGORY 1</u>
1057	how many weeks you are pregnant a/e no
1061	it tells you if you are pregnant and also how many weeks you are

	pregnant a/e nothing else
1129	its an advance pregnancy test that determines how many weeks you are pregnant.
1482	how weeks pregnant you are a/e results 5 days sooner
1485	how many weeks pregnant you are a/e no

<u>ID</u>	<u>OTHER MESSAGE RESPONSES COUNTED IN CATEGORY 2</u>
836	it tells you how far along you are if youre late
1107	estimates the weeks that you are t/a
1108	it can estimate how many weeks you are w/e t/a
1251	it tells you how many weeks you are
1345	that it can estimate how many weeks you are
1362	It can detect approximately how many weeks you are.
1416	lets you know how far you are along
1458	That it has an indicator as to how far along you are.

<u>ID</u>	<u>RESPONSES COUNTED IN CATEGORY 1 IN WEEKS ESTIMATOR QUESTIONS (210/215)</u>
773	says how many weeks pregnant you are if pregnant
850	It tells you how many weeks you might be pregnant and it can go to 5+ weeks.
888	how many weeks pregnant you are
1057	how many weeks are you pregnant a/e no
1178	That it would tell you how many weeks that you are pregnant a/e No .
1242	it's an estimate of how many weeks pregnant you are. i didn't understand that. up to five days before your missed period or four days from your expected period? is that the same thing? ... that's it
1266	tells you how many weeks pregnant you could be
1282	will tell you how many weeks pregnant you are
1292	that it will tell you how many weeks pregnant you are
1387	that it can tell you how many weeks pregnant you are a/e no
1433	that it estimates weeks pregnant.
1499	Can tell you approximte amount of weeks you are pregnant or not
1501	Can give you an estimation of how many weeks you are pregnant
1502	Can also estimate the amount of weeks you are pregnant

<u>ID</u>	<u>RESPONSES COUNTED IN CATEGORY 2 IN WEEKS ESTIMATOR QUESTIONS (210/215)</u>
573	It tells you how far along you are.

585	its just an estimate about how far along you are
689	it tells you esactly how far along i was to be
690	it tells me exactly how faar along i am
768	That iit will tell you how far along you are
836	it was not very clear but i think it means how far along you are in the pregnancy
994	tell how weeks you are
1046	It tells you how far along you are. a/e thats it
1061	if you are pregnant and also if you are not pregnant in how many weeks you are far a/e nothing else
1099	it can tell you how far you are but it isnt forsure t/a
1107	that it can tell you how far along you are t/a
1108	basically it approx how many weeks you are w/e t/a
1153	tells how many weeks could be
1172	it suppose to determine how far along you are in weeks
1345	how many weeks you are
1349	how many weeks you are. a/e no
1458	How far along you are.
1487	it estimates the weeks of far along pregnant your are a/e no
1494	can tell you how far along
1504	Can estimate how far along you are in weeks

ORC International
315 Park Avenue South, 14th Floor
New York, NY 10010

US3000562/P63-0314

August, 2014

Pregnancy Test Kit Survey
SCREENER

<u>MARKET:</u>	<u>GENDER/AGE:</u>	<u>CELL:</u>
Austin, TX. 1	<u>Females</u>	
Buffalo..... 2	18 - 24..... 1	PINK/157 1
Chicago 3	25 - 34..... 2	ORANGE/284 2
Denver 4	35 - 49..... 3	YELLOW/360 3
Detroit..... 5		BLUE/491..... 4
Ft. Worth..... 6		GREEN/572 5
Houston 7		GRAY/635..... 6
Indianapolis 8		
Los Angeles..... 9		
Paramus, NJ 10		
Philadelphia 11		
Phoenix 12		
St. Louis. 13		
Tampa, FL 14		
Tucson..... 15		
West Nyack, NY 16		

INTERVIEWER I.D.:	1	2	3	4	5	6	7	8	9	10
-------------------	---	---	---	---	---	---	---	---	---	----

Sight screen for women age 18-49 years old

Hello, I'm _____. I'm conducting a study for ORC International, a market research organization, and I would like to ask you a few brief questions.

A. Which of the following groups includes your age? Are you ... *(Read appropriate choices)?*

Under 18 years old 1 → *(Terminate, circle in box below. Erase and re-use screener.)*

18 - 24 years old 2

25 - 34 years old 3

35 - 49 4

→

Check quotas. If needed, continue. If over quota, terminate. Circle in box below, erase and re-use screener.

50 + years old 5

→

(Terminate, circle in box below. Erase and re-use screener.)

(Do Not Read)-> Refused X → *(Terminate, circle in box below. Erase and re-use screener.)*

Terminate Q. A: Under 18/Over age/Refused

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Circle in appropriate box above. Erase and re-use screener.

OVER QUOTA at Q. A: Age

FEMALES

18 - 24

01	02	03	04	05	06	07	08	09	10
11	12	13	14	15	16	17	18	19	20

25 - 34

01	02	03	04	05	06	07	08	09	10
11	12	13	14	15	16	17	18	19	20

35 - 49

01	02	03	04	05	06	07	08	09	10
11	12	13	14	15	16	17	18	19	20

Circle in appropriate box above. Erase and re-use screener.

- B. But first, do you or does any member of your immediate household work ...
(Read list and record "yes" or "no" for each)?

	<u>Yes</u>	<u>No</u>
In advertising	<div style="border: 1px solid black; padding: 2px;">1</div>	1
In market research	<div style="border: 1px solid black; padding: 2px;">2</div>	2
For a real estate company	3	3
For an obstetrician or gynecologist	<div style="border: 1px solid black; padding: 2px;">4</div>	4
For a manufacturer or distributor of reproductive health products.....	<div style="border: 1px solid black; padding: 2px;">5</div>	5
For an insurance company	6	6

Terminate if "Yes" to any boxed occupation listed above. Circle in box below. Erase and re-use screener.

Terminate Q. B: Related Occupation

01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Circle in appropriate box above. Erase and re-use screener.

- C. If you thought you had a fever, which, if any, of the following things would you do? Please choose as many from the list as apply. Would you...

(Read list and record "yes," "no," "don't know," or "refused," for each item.)

	Yes	No	Don't know	Refuse
Call or visit your doctor	1	2	3	4
Take your temperature.....	1	2	3	4
Take a fever reducing medication such as aspirin.....	1	2	3	4
Conduct online research about fevers.....	1	2	3	4

- D. If you were experiencing persistent headaches, which, if any, of the following things would you do? Would you...

(Read list and record "yes," "no," "don't know," or "refused," for each item.)

	Yes	No	Don't know	Refuse
Call or visit your doctor	1	2	3	4
Take a multi-purpose pain reliever, such as Tylenol or Advil.....	1	2	3	4
Take a pain reliever specifically designed to help with headaches, such as Excedrin Tension Headache	1	2	3	4
Conduct online research about persistent headaches.....	1	2	3	4

- E. If you thought you might be pregnant, which, if any, of the following things would you do?
Please choose as many from the list as apply. Would you...

(Read list and record "yes," "no," "don't know," or "refused," for each item.)

	Yes	No	Don't know	Refuse
Call or visit your doctor	1	2	3	4
Use an at-home pregnancy test kit	1	2	3	4
Make lifestyle changes, such as avoiding alcoholic beverages, cigarettes, or certain foods	1	2	3	4
Conduct online research about pregnancy	1	2	3	4

*Must select use an at-home pregnancy test kit
Otherwise, terminate.*

Terminate E: not an at-home pregnancy test kit

FEMALES

18 - 24

01	02	03	04	05	06	07	08	09	10
11	12	13	14	15	16	17	18	19	20

25 - 34

01	02	03	04	05	06	07	08	09	10
11	12	13	14	15	16	17	18	19	20

35 - 49

01	02	03	04	05	06	07	08	09	10
11	12	13	14	15	16	17	18	19	20

Circle in appropriate box above. Erase and re-use screener.

- F. During the past 3 months, have you participated in a survey in a mall research facility other than a political poll?

Yes 1 → *(Terminate, circle in box below, erase and re-use screener)*

No → *(Continue)*

Don't know 3 → *(Terminate, circle in box below, erase and re-use screener)*

Terminate F: Past participation

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Circle in appropriate box above. Erase and re-use screener.

- G. During the past month, have you heard anything about the subject of any of the interviews we are conducting here at the mall?

Yes 1 → *(Terminate, circle in box below, erase and re-use screener)*

No → *(Continue)*

Don't know 3 → *(Terminate, circle in box below, erase and re-use screener)*

Terminate G: Overheard interviews

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Circle in appropriate box above. Erase and re-use screener.

- H. Do you usually wear eyeglasses or contacts when shopping?

Yes 1 → *(Ask I)*

No 2 → *(Skip to J)*

- I. Do you have them with you?

Yes → *(Must be circled to continue)*

No 2 → *(Terminate, circle in box below, erase and re-use screener)*

Terminate I: No eyeglasses/contacts

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Circle in appropriate box above. Erase and re-use screener.

- J. Invite qualified respondent to interviewing facility. If qualified but refused, terminate. Circle in box below. Erase and re-use Screener.

Willing to participate1 → *Check with your supervisor for a color cell assignment. After the respondent has been assigned to a color cell, circle the correct color cell on the front page of the screener. Then, go to programmed Main Questionnaire*

Not willing to participate2 → *(Terminate, circle in box below, erase and re-use screener)*

Terminate J: Qualified/Refused

01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Circle in appropriate box above. Erase and re-use screener.

ORC International
315 Park Avenue South, 14th Floor
New York, NY 10010

August 2014

Pregnancy Test Kit Survey

PROGRAMMER: DISPLAY ANY TEXT WITH A NEW QUESTION NUMBER ON ITS OWN SCREEN.

INTERVIEWER INSTRUCTION

99. First, please enter the cell from the front the screener for this respondent. [PROGRAMMER - INCLUDE THIS AT THE BEGGING OF THE PROGRAM.]

1. Cell 1
2. Cell 2
3. Cell 3
4. Cell 4
5. Cell 5
6. Cell 6

100. INTERVIEWER INSTRUCTION (RESPONDENT SHOULD NOT BE PRESENT):
Prior to bringing the respondent into the interviewing area, on the following screens you will be given instructions regarding which product you will be showing to the respondent.

103. INTERVIEWER INSTRUCTION (RESPONDENT SHOULD NOT BE PRESENT):
FOR THIS INTERVIEW, YOU SHOULD HAVE ONLY A PRODUCT LABELLED:

[Programmer: insert color/number as per cell assignment (see front of screener):]

COLOR: _____
NUMBER: _____

Please get the correct product to have ready to show the respondent. All other products should be out of view.

105. Please record below the color of the numbered label on the product you have ready to show the respondent:

1. PINK
2. ORANGE
3. YELLOW
4. BLUE
5. GREEN
6. GRAY

BASE: IF INCORRECT COLOR IS SELECTED IN Q105

106. INTERVIEWER INSTRUCTION (RESPONDENT SHOULD NOT BE PRESENT):
Please put away the [INSERT COLOR SEELECTED IN Q105] product so it is out of view.

Please only have the following product ready to show the respondent:
[REPEAT TEXT FROM Q103; WHEN RESPONDENT CONTINUES THEY SHOULD BE
TAKEN TO Q105 AGAIN]

BASE: CORRECT COLOR RECORDED IN 105

107. Please record below the number on the colored label on the product you have ready to show the respondent:

1. 157
2. 284
3. 360
4. 491
5. 572
6. 635

BASE: IF INCORRECT NUMBER IS SELECTED IN Q107

108. INTERVIEWER INSTRUCTION (RESPONDENT SHOULD NOT BE PRESENT):
Please put away the product labeled with the number [INSERT NUMBER SELECTED IN
Q107] product so it is out of view.

Please only have the following product ready to show the respondent:
[REPEAT TEXT FROM Q103; WHEN RESPONDENT CONTINUES THEY SHOULD BE
TAKEN TO Q107 AGAIN]

BASE: CORRECT PRODUCT IS SELECTED IN Q107

110. INTERVIEWER INSTRUCTION (RESPONDENT SHOULD NOT BE PRESENT):
Now that we have confirmed you have the correct product, please bring the respondent to
the interviewing area and continue with the main survey.

MAIN SURVEY FOR QUALIFIED RESPONDENTS
--

[PROGRAMMING NOTE: please program any item that is shown with its own question number in
this document so that it appears on a screen by itself.]

BASE: ASK ALL

150. In a moment I am going to show you a home pregnancy test kit. I would like you to please
take your time to carefully review the box as you normally would if you were considering
purchasing the product.

After you are finished looking at the product I will ask you some questions about it. If for any
question, you don't know or have no opinion, please feel free to say so. Please do not guess.

BASE: ASK ALL

160. [INTERVIEWER: Hand respondent the box with the [INSERT COLOR FROM Q103] label
with the number [INSERT 3-DIGIT # FROM Q103]. The front of the package should be
facing respondent when you hand it to them. Read the following instruction:]

Please take your time to review this box as you normally would if you were considering purchasing the product. Please do not open the box.

I am going to give you some time to review it and will be back shortly.

[INTERVIEWER: Leave the room and return in one minute]

BASE: ASK ALL

170. Feel free to continue to take more time to review the box if you need it.

Please let me know whenever you are finished.

[WHEN RESPONDENT IS FINISHED, TAKE BACK THE PRODUCT AND PLACE IT OUT OF SIGHT FOR THE REMAINDER OF THE INTERVIEW]

BASE: ASK ALL

180. Now I'm going to ask you a few questions. Please be as specific and detailed as you can in answering the questions.

BASE: ASK ALL

200 What was the main message or messages on the product's box?

[Interviewer: record response verbatim; Probe once with: Anything else? Record verbatim]

[LARGE TEXT BOX]

BASE: ASK ALL

201 What else, if anything did the box communicate to you?

[Interviewer: record response verbatim; Probe once with: Anything else? Record verbatim]

[LARGE TEXT BOX]

BASE: ASK ALL

205 You may have mentioned this already, but did the box communicate anything about a **weeks estimator**?

1. Yes, it did
2. No, it did not
3. I don't know

BASE: 205=YES

210 What did the box communicate about a **weeks estimator**?

Please be as specific and detailed as possible.

[Interviewer: record response verbatim; Probe once with: Anything else? Record verbatim]
[LARGE TEXT BOX]

BASE: 205=YES

215 What, if anything, did the box communicate about what the weeks estimator tells you?

Please be as specific and detailed as possible.

[Interviewer: record response verbatim; Probe once with: Anything else? Record verbatim]
[LARGE TEXT BOX]

BASE: ASK 205=YES

220 **HAND CARD 220 TO RESPONDENTS AND SAY:**

For this question, please read the answer choices on this card carefully before answering.

Based on what the box communicated, do you think the product's estimate of weeks is telling you...

[Interviewer: Read choices slowly, one at a time, and record one response]

1. The **same** thing as when a doctor gives you an estimate of weeks
2. A **different** thing than when a doctor gives you an estimate of weeks
3. Or, do you not have an opinion

CERTIFICATION PAGE

It's very important that we are able to validate that you, yourself have taken this survey.

So, please provide us with your contact information for a ONE time call for VALIDATION purposes ONLY.

I acknowledge that I was interviewed on this date. During this interview I was shown a pregnancy test and asked some questions.

Please type in your full name and address below:

First Name: _____
Last Name: _____
Street Address: _____
City: _____
State: _____
Zip Code: _____

For validation purpose, please provide your phone number.

Phone Number: _____

[PROGRAMMER - please put the following on a separate screen]

Here is the respondent computer ID #: _____

INTERVIEWER INSTRUCTION: Transfer this number onto the paper certification page and complete the certification with the respondent.

THANK YOU.

[PROGRAMMER: COUNT INTERVIEW AS COMPLETE ONCE THE COMPUTER ID# IS DISPLAYED ON SCREEN.]



Job #US3000562/P63-0314
Pregnancy Test Kit Survey
August, 2014

Dear Supervisor:

The following materials are needed for the "Pregnancy Test Kit Survey":

- Screeners (white)
- Main Questionnaires (on computer)
- Certification Pages
- Exhibits
 - Cell 1 – #157 pink color label product
 - Cell 2 – #284 orange color label product
 - Cell 3 – #360 yellow label product
 - Cell 4 – #491 blue label product
 - Cells 5 – #572 green label product
 - Cell 6 – #635 gray label product
- Hand Card 220
- Interviewer Id List
- Interviewer's Instructions
- Master Quota Control Sheet
- Quota Control Tally Sheet
- Progress Report Sheets
- Validation Listing Sheet

OVERVIEW

This is a six cell test to be conducted in an enclosed mall facility.

In each of the six cells (Cells 1 – 6) each respondent's will be shown one of six pregnancy test kits with a number on a color label and asked questions about it.

You will be sight screening in the mall for females **18 -49 years of age**.

Qualified respondents will then be escorted back to the interviewing area to be shown one of the six exhibits and asked questions about it.

INTERVIEWER NUMBERS

Interviewers are to be assigned interviewer numbers. A separate sheet should be provided to us with the interviewer numbers and corresponding names. These interviewer numbers must be recorded by the interviewer in the box on the front of the screener.

You should have only experienced female interviewers working on the job. No more than about 20% – 30% of your interviews should be conducted by one interviewer.

STAFF

All interviewers while screening and interviewing on this study are not to be screening or interviewing on any other study.

BRIEFING

Field supervisors must have read and examined all materials to be completely prepared for the study. The field supervisor must be present at the briefing and be present for all days of interviewing on the study. In addition, the supervisor must observe at least 15% or 1 or 2 interviews, whichever is greater per interviewer. The supervisor is to sign the Certification Page for every interview they have observed. A field kit of all paper materials must be supplied for each participant at the briefing.

Each interviewer is to read his/her Interviewer Instructions and sign them. Also, a personal briefing is required. If possible, one briefing should be conducted. All interviewers must do at least one Practice Interview on the computer.

PLEASE STRESS THE FOLLOWING:

1. Showing the exhibits (pregnancy test kit) only when instructed on the questionnaire.
2. Prior to bringing the respondent into the interviewing area making sure that all non-relevant products are to be out of sight.
3. Respondents are allowed to handle the package but must not be allowed to open the box.
4. Cell #1 - Pink cell the respondent will see the package with #157 on a pink color label.
5. Cell #2 - Orange cell the respondent will see the package with #284 on an orange color label.
6. Cell #3 - Yellow cell the respondent will see the package with #360 on a yellow color label.
7. Cell #4 - Blue cell the respondent will see the package with #491 on a blue color label.
8. Cell #5 - Green cell the respondent will see the package with #572 on a green color label.
9. Cell #6 - Gray cell the respondent will see the package with #635 on a gray color label.
10. Never making reference to the exhibit by name nor discussing/explaining it or anything else.
11. Remove the exhibit from view when instructed to do so in the program.
12. Recording response verbatim.
13. ALL PRODUCTS MUST BE KEPT IN A SECURE LOCATION AT ALL TIMES.

QUALITY CONTROL PROCEDURES

ANY WORK RECEIVED BY OUR OFFICE, WHICH HAS NOT BEEN SUBJECT TO THE FOLLOWING PROCEDURES, WILL BE SUBJECT TO A PAYMENT ADJUSTMENT.

Strict quality control is a primary Supervisor responsibility. ORC requires that the following quality controls be strictly followed:

- This study must be screened by itself, not along with any other projects.
- No more than one respondent per shopping group should be screened.
- Friends, relatives or acquaintances must NOT be interviewed.
- Except for the interviewer no one else is to be in the interviewing room with the respondent.
- Anyone accompanying the respondent must wait for the respondent in the waiting room.
- Be sure the respondent does not see the exhibit before it is indicated to be shown.

- **Do not allow any respondents to see any exhibit at any time other than the one exhibit they are being interviewed about.**
- Interviewing should not be conducted with anyone who has a hearing, visual or Spanish language problem.

SECURITY INSTRUCTIONS

- All materials related to this study are the property of ORC and our client.
- You are responsible for all materials being used on this study; all materials are to be kept out of sight of anyone not directly involved in the study.
- No one representing ORC or our client is to be admitted to the facility or have access to the materials without your first calling ORC to confirm. Further, no one is to be permitted access to the facility or materials without showing satisfactory identification.

EDITING

All work should be edited soon after completion in order to spot errors and quickly bring them to an interviewer's attention.

In editing check for:

- **Completeness including market/age/cell assignment/interviewer id on the front of each screener of each completed interview**
- **Following proper skip patterns exactly.**
- **Completing the certification page.**
- **Certification page filled out by interviewer and respondent**
- **Transfer the respondent ID from the computer to match up with the signed certification page.**

If an interviewer appears not to be following instructions exactly, please alert her to that as soon as possible and take remedial action if needed.

VALIDATION

- List only ONE interviewer's work on a validation sheet.
- Fill out all required respondent information, interviewer name, city and quota group.
- Be sure about indicating correct area code for every respondent.
- Write listings in black ink ONLY.
- You are not to phone validate, since we will be independently validating 100% of every interviewer's work.
- You must, however, monitor or do on-site validation for at least 10% of each interviewer's work and note validated work on Validation Listing Form.

- Handling "No Phone" or "Refused Phone"

The Supervisor must attempt to do a telephone lookup for all respondents who do not give a phone number. If a number is not found, indicate that you have attempted a look-up by writing "L.U.".

PROGRESS REPORTS

Enclosed are Progress Report Sheets for your convenience. Accurate cumulative reports are to be received by us each day the study continues. We are to RECEIVE them by 10:00 AM OUR TIME.

- **FAX # 646-365-6140 (Preferred). Do not use a cover sheet, just fill in all the required information on the Progress Report Sheet. Be sure to write your city and contact name on each sheet of the report.**

RETURNING WORK

- Completed respondent signed certification pages are to be stapled to the screener and bundled together by interviewer with that interviewer's Validation Sheet on the top of the pile.
- Return completed Interviewers Id sheet.
- Bundle together all Screeners that contain a record of termination. Mark each screener "For Tallies Only". Label this bundle "Screener -- Tallies Only".
- Enclose Master/Final Progress Report Forms.
- Remember to insure packages:
 - Completed Screener and signed Certification Pages for \$500.00.
 - Exhibits (Pregnancy Test Kits) --- ONLY RETURN WHEN INSTRUCTED BY ORC INTERNATIONAL

SHIPMENT/CHARGES

- All shipments are to be sent Federal Express Priority Overnight to ORC, and charged to our Federal Express Account #3305-1825-1 unless otherwise specified
- Insure packages for \$500.00
- Indicate Job #US3000562 (P63-0314) on airbill for all shipments

- Important

Since ORC does not want to incur additional shipping charges, make sure that all items specified above are included with your completed questionnaires, unless otherwise specified. If you "forget" we will have to deduct the additional shipping charges from your bill.

BILLING

Submit all bills under separate cover to my attention in the New York office.

Thank you for your help with this survey.

INTERVIEWER INSTRUCTIONS

INTERVIEWER'S NAME: _____ DATE: _____

BRIEFING SUPERVISOR: _____

MATERIALS

- Screeners (white)
- Main Questionnaires (on computer)
- Certification Pages
- Exhibits
 - Cell 1 – #157 pink color label product
 - Cell 2 – #284 orange color label product
 - Cell 3 – #360 yellow color label product
 - Cell 4 – #491 blue color label product
 - Cells 5 – #572 green color label product
 - Cell 6 – #635 gray color label product
- Hand Card 220
- Interviewer Id List
- Interviewer's Instructions
- Quota Control Tally Sheet
- Progress Report Sheets
- Validation Listing Sheet

OVERVIEW

This is a six cell test to be conducted in an enclosed mall facility.

In each of the six cells (Cells 1 – 6) each respondent's will be shown one pregnancy test kit with a number on a color label and asked questions about it.

You will be sight screening in the mall for females **18 -49 years of age**.

Qualified respondents will then be escorted back to the interviewing area to be shown one of six exhibits and asked questions about it. Do not allow any respondent to see more than the one exhibit for which they are being interviewed.

QUOTA ASSIGNMENT

Your supervisor will give you a quota assignment by cell and age.

DO YOU HAVE A QUOTA FOR COMPLETED MAIN QUESTIONNAIRES?

Yes, you do. You have a quota for completed interviews.

You are to do exactly the number of interviews assigned by age within each cell.

IMPORTANT:

Because you have a hard/exact quota by age within cell, only completed main interviews count toward your quota. You will keep track of terminations for incidence purpose only. It is imperative that when terminating a respondent you circle the next available number in the appropriate age for that terminated respondent. This is the only way you will be able to accurately keep track of incidence rate.

ELIGIBILITY

An eligible respondent is a female who meets the following requirements:

- Respondent must be 18-49 years of age and needed for your quota (Q.A).
- Respondent must pass occupational security (Q. B).
- Respondent is likely to use an at-home pregnancy test kit if she thought she might be pregnant (Q.E)
- Respondent has not participated in a survey in a research facility in the past 3 months (Q.F)
- Respondent has not heard nor is aware of any of the interviews being conducted in the mall (Q.G)
- Respondent must have glasses/contact lenses with them if worn when shopping (Q. H/I)
- Respondent must be willing to participate (Q.J)

QUALITY ASSURANCE IN SCREENING

- Do not interview friends, relatives or acquaintances.
- When screening for this study you must not screen for any other study at the same time.
- Only one potential respondent in a group of people may be screened.
- Only one potential respondent is to be in the interviewing room at the time of the interview.
- Anyone accompanying the respondent must wait for the respondent in the waiting room.
- Be sure the respondent does not see the **exhibit** before it is indicated to be shown.
- Do not proceed to interview anyone who has a hearing, visual or Spanish language problem.

MAIN QUESTIONNAIRE**GENERAL GUIDELINES**

- Read introductions and all questions exactly as written.
- Always give respondents enough time to answer.
- Mark answers clearly.
- When questionnaire calls for you to show the **exhibit** under no circumstances are you to discuss the exhibit with the respondent. Read the questions referring to the exhibit verbatim as written, always referring to the exhibit AND SAYING WHAT THE QUESTIONNAIRE STATES.

OPEN ENDED RESPONSES

- Read open-ended questions slowly and ask respondent to slow down if you cannot write/type quickly enough. **WE NEED EXACT VERBATIM RESPONSES BUT YOU SHOULD BE SURE TO PROBE IF A THOUGHT IS NOT CLEAR OR COULD BE INTERPRETED DIFFERENT WAYS.** Capture comments exactly as respondent states them -- **never summarize or paraphrase.**
- Capture comments in the words of the respondent. Do not say “she said...” or “she felt...” rather; just write down exactly what the respondent says.
- If respondent says, “I have already answered the question”, or “same”, do not write this – instead, ask them to repeat their answer and write it verbatim.
- Give respondent sufficient time to think and answer a question before continuing.
- Never reword the questions. Simply repeat the question if the respondent indicates that she does not understand. **DO NOT** attempt to explain any questions.
- Answers to the open-end questions are important to this study and will be carefully read.
- However, if respondents gives you a vague or one-word answer, probe for specifics, for example, ask: “What do you mean by ...?”
- Do not probe with additional “what else?” questions beyond what is shown on the questionnaire.

SCREENER QUESTION BY QUESTION INSTRUCTIONS**SCREENER:**

Be sure you are familiar with the circle screener method of termination. If you are not, ask your supervisor to explain it to you. For any answers which disqualify the respondent, you are to circle the next available number in the termination box, erase and re-use screener. Do **NOT** erase any of the circles around the numbers in the termination boxes. If all the numbers in a termination box have been circled before you contact a qualified, willing respondent, you are to return the screener to your supervisor. Write in your name, circle your city and mark clearly on the top of the screener "FOR TALLIES ONLY".

Sight screen for appropriate age groups as needed. Randomly approach females 18 - 49 years of age and ask questions on screener exactly as indicated.

SCREENER:

Circle your market.

Circle your Interviewer Id.

Circle cell assignment (only after completing Q.J.)

- Q.A: If 18 - 49 years of age, check open age quotas. If needed, continue. Otherwise, terminate. If under 18/50+ or refused age, terminate.
- Q.B: Read the list. Record “yes” or “no”, for each occupation. If "yes" to any occupation terminate. Otherwise continue.
- Q.C: Read the list. Record “yes,” “no,” “don’t know,” or “refused,” for each item.
- Q.D: Read the list. Record “yes,” “no,” “don’t know,” or “refused,” for each item.
- Q.E: Read the list. Record “yes,” “no,” “don’t know,” or “refused,” for each item. Must select “Use an at-home pregnancy test kit” to continue. Otherwise, terminate.
- Q.F: If “no” continue. If “yes” or “don’t know” terminate.
- Q.G: If “no” continue. If “yes” or “don’t know” terminate.
- Q.H: If “yes” ask Q. I. If “no” skip to Q.J.
- Q.I: If “yes” continue. If “no” terminate.
- Q.J: Invite the respondent to participate, continue with the main questionnaire. If the respondent refuses, terminate. Check with your supervisor for a color cell assignment. After the respondent has been assigned to a color cell, circle the correct color cell on the front page of the screener.

MAIN QUESTIONNAIRE QUESTION BY QUESTION INSTRUCTIONS

The questionnaire is straightforward and must be administered exactly as written.

If respondent wears glasses or contact lenses, that is they said “yes” to Q.H in the screener, make sure that she is wearing them before continuing.

Prior to bringing the respondent into the room, make sure all non-relevant products are out of respondents’ view. Do NOT allow respondents at any point to see any exhibit other than the one for their assigned color cell.

For the Cell #1 the respondents will be shown the following item:

- **Product #157** with a **pink** color label.

For the Cell #2 the respondents will be shown the following item:

- **Product #284** with an **orange** color label.

For the Cell #3 the respondents will be shown the following item:

- **Product #360** with a **yellow** color label.

For the Cell #4 the respondents will be shown the following item:

- **Product #491** with a **blue** color label.

For the Cell #5 the respondents will be shown the following item:

- **Product #572** with a **green** color label.

For the Cell #6 the respondents will be shown the following item:

- **Product #635** with a **gray** color label.

Initially, allow the respondent as much time as needed to look at the product, but make sure that you inform the respondent that she may not open the box. When the respondent indicates being finished, take back the product and **place it out of sight for the remainder of the interview.**

SECURITY:

- You are responsible for all materials being used on this study. Exhibits must be locked up when not working on this study.
- All materials are to be kept out of sight of anyone not directly involved in the study
- All materials related to this study are the property of ORC International and our client.
- No one representing ORC International or our client is to be admitted to the facility or have access to the materials without your first calling ORC International to confirm. Further, no one is to be permitted access to the facility or materials without showing satisfactory identification.

UPON COMPLETION OF INTERVIEW:

1. *Fill out all respondent information on the front page of the screener*
2. Fill out all respondent information on certification page. You and the respondent must read, sign and date certification page.
3. Be sure to transfer the respondent ID from the computer to match up with the signed certification page.
4. Staple the screener to the sign Certification page and give it to your supervisor.
5. Only if a supervisor observed the interview, he/she must also sign the certification page
6. Thank respondent.